TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 247

THE BRITISH TRANSPORT COMMISSION,
PETITIONER,

vs.

UNITED STATES OF AMERICA, AS OWNER OF THE U.S.N.S. HAITI VICTORY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 11, 1956

CERTIORARI GRANTED OCTOBER 8, 1956

SUPREME COURT OF THE UNITED STATES

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[fol. 1a] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

No. 7622

PETITION OF THE UNITED STATES OF AMERICA, AS OWNER OF THE USNS HAITI VICTORY, FOR EXONERATION FROM OR LIMITATION OF LIABILITY IN A CAUSE OF LIMITATION OF LIABILITY, CIVIL AND MARITIME—Filed June 18, 1953

First. The United States of America is a sovereign and was at all times hereinafter mentioned the owner and operator, as a public vessel of the United States, of the USNS HAITI VICTORY, with an office and place of business in this district at U. S. Naval Operating Base, Norfolk, Virginia. By statute, the United States is entitled to the benefits of all exemptions and of all limitation of liability accorded to the owners, charterers, operators or agents of vessels, 46 U. S. C. 789.

Second. The USNS HAITI VICTORY was and is a single screw steel steamship 439.1 feet in length, 62.1 feet in breadth, and 34.5 feet in depth, Victory type, official number 246 243, of 7,607 gross tons, computed as provided by 46 U. S. C. 183 (c). Until the happening of the events referred to hereinafter, the USNS HAITI VICTORY was tight, staunch, strong, and seaworthy, and was in all respects fitted for the voyage on which she was engaged.

Third. The said USNS HAITI VICTORY is at present lying within this district and within the jurisdiction of this honorable Court, being berthed at Berth 35, pier 3, U. S. Naval Base, Norfolk, Virginia.

[fol. 1-b] Fourth. The USNS HAITI VICTORY departed from New York City on or about the 27th day of April, 1953, carrying Government cargo for the armed forces and their bases overseas, bound first for Argentia, Newfoundland, and thence to Bremerhaven, Germany.

Fifth. Having completed the leg of her voyage from New York to Argentia, the HAITI VICTORY arrived off Dover breakwater, bound for Bremerhaven, Germany, from Argentia, at about 1:00, a. m., on May 6, 1953, and there picked

up a North Sea Pilot. The North Sea Pilot was duly licensed by Trinity House, held a British master's license, and was skilled and acquainted with piloting in the North Sea. The HAITI VICTORY proceeded up the Channel past the Goodwins on the usual courses, and during the early morning of May 6, 1953, was on course 023½° T. approaching Galloper Lightship. An experienced and vigilant lookout was at the bow; a skilled quartermaster at the wheel; the chief officer on watch on the bridge; and the North Sea Pilot at the conn.' The usual complement of skilled engineers was on duty in the engine room. She was in all respects seaworthy, and properly manned, equipped, and supplied. The HAITI VICTORY passed abeam of Galloper Lightship at 0414, distance 1.3 miles off, and altered course to 035° T. to make for ST 3 Buoy. At the time the HAITI VICTORY passed Galloper Lightship and for the nighttime previous thereto, visibility was good; the sea was calm; the air was light; and visibility appeared to be unimpaired. It was still dark but to the eastward there were signs of daybreak. The lightship was not sounding any fog signals, nor were any fog signals being sounded by any of the other vessels whose lights could be plainly seen in the vicinity. The HAITI VICTORY had passed another vessel shortly before arriving at Galloper Lightship and the lights of this vessel had been clearly visible for some time. Less than a minute after the HAITI VICTORY had passed Galloper Lightship abeam, a short one-blast whistle was heard forward of the beam. The radar of the HAITI VICTORY was not in use but had been kept in a warmed-up [fol. 2] standby condition as a matter of prudence. No light or vessel could then be identified with the whistle which had been heard. There was no sign of any fog or of any fog bank. However, the radar which was immediately put to use showed a target about a mile off, bearing on the starboard bow. The HAITI VICTORY immediately stopped her engines and the pilot concentrated on the radar image. As soon as the radar showed that the target was moving toward the course of the HAITI VICTORY the pilot of the HAITI VICTORY ordered hard right rudder and one short blast of the whistle. These orders were promptly obeyed. The other vessel, which later proved to be the DUKE OF YORK, blew two short blasts indicating that she

was turning to port. The engines of the HAITI VICTORY were promptly put full speed astern and she sounded three short blasts. Despite the avoiding action attempted by the HAITI VICTORY, the DUKE OF YORK continued with no apparent reduction of speed and turned towards the HAITI VICTORY resulting in a hard collision, the force of which cut the bow of the DUKE OF YORK in two. The DUKE OF YORK proved to be a cross-Channel railway ferry operating on a fixed schedule between the Hook of Holland and Harwich, England, and had aboard 437 passengers who were being transported from a railroad station in Holland to a railroad station in Harwich. The DUKE OF YORK was a twin screw modern passenger ferry built in the United Kingdom in 1935 and capable of speed in excess of 21 knots and is believed to have been operating on radar on her voyage across the Channel traffic. The collision occurred at approximately 0416. Prompt efforts were made by both vessels and by a number of other vessels in the area to aid the injured, to rescue the passengers, and to take all possible humanitarian measures to bring the injured persons into various ports and places in the United Kingdom.

[fol. 3] Sixth. The aforesaid collision and all damages, losses and injuries resulting therefrom were not caused or contributed to by any fault or neglect on the part of the USNS HAITI VICTORY or those in charge of her but were caused by the fault and neglect of the SS DUKE OF YORK and the persons in charge of her in the following respects, among others which will be pointed out at the trial thereof:

1. She was being navigated at a rate of speed which was dangerous, excessive, and improper in view of the existing conditions.

2. She was proceeding through a mist or conditions of reduced visibility without the sounding of fog signals.

3. She sounded a one-blast starboard turning signal without changing course to starboard.

4. She crossed a one-blast starboard turning signal from the HAITI VICTORY with a two-blast port turning signal of her own.

5. She sounded a two-blast port turning signal and did not sufficiently change course to port.

6. She failed to maintain her course and speed in a crossing situation.

7. She failed to plot her radar data so as to pass either clearly ahead of the target, which proved to be the HAITI VICTORY, or sufficiently alter course to port so as to pass clearly astern of the target, which proved to be the HAITI VICTORY.

8. She failed to plot her radar data so as to allow for sufficient clearance of the target if the target altered course at Galloper Lightship.

9. She was not maintaining an efficient lookout.

10. She was not maintaining a lookout properly sta-
[fol. 4] tioned in the eyes of the ship.

11. She did not seasonably stop and reverse her engines.

Seventh. The aforesaid collision and all losses, damages, deaths, and injuries resulting therefrom were done, occasioned, and occurred without fault on the part of the petitioner and without the petitioner's privity or knowledge, and without the privity or knowledge of the master or of the superintendent or managing agent of the petitioner at or prior to the commencement of the voyage.

Eighth. The DUKE OF YORK was cut in two by the collision and her owners have filed claim for damages in excess of $1,500,000. Eight persons aboard the DUKE OF YORK were killed as a result of the collision. Their names and addresses, so far as presently known, are annexed hereto as Schedule A. Approximately nine persons aboard the DUKE OF YORK were injured as a result of the collision. Their names and addresses are annexed hereto as Schedule B. Notices have been given on behalf of several of the deceased and injured passengers that claims will be made. Inquiries looking toward the filing of claims have been made in other cases. In addition to the above, a great many passengers on board the DUKE OF YORK who were not injured have made claims for loss of their baggage or personal effects. The names and addresses of all these persons are not presently known to the petitioner. In addition, the cargo and mail aboard the DUKE OF YORK was damaged or

lost and its owners are expected to make claims against the United States.

Ninth. The USNS HAITI VICTORY, in good condition before the collision, was worth no more than $1,100,000. She was carrying Government cargo for the petitioner at that time and had no commercial freight on the voyage. The cost of repair to the HAITI VICTORY arising from the collision amounted to $64,500. The total value of the petitioner in the USNS HAITI VICTORY after the collision is not in excess of $1,035,000. The amount of the alleged claims [fol. 5] exceeds the amount of the value of petitioner's interest in the HAITI VICTORY together with her freight pending at the end of the same voyage. No written notice of claim was given to petitioner by anyone at any time more than six months prior to the filing of this petition.

Tenth. There are no liens on the USNS HAITI VICTORY.

Eleventh. Petitioner believes that claims for substantial amounts may hereafter be presented to it for damages sustained by the DUKE OF YORK, passengers aboard the DUKE OF YORK, the next of kin of deceased passengers, and representatives of cargo aboard the DUKE OF YORK. Although the particulars thereof are presently unknown, petitioner is informed and believes that the total claims of all who may have suffered loss, damage, or injury by reason of the aforesaid collision will exceed the value of petitioner's interest in the USNS HAITI VICTORY and her pending freight.

Twelfth. Petitioner desires to contest its liability and the liability of the USNS HAITI VICTORY for all losses, damages or injuries resulting from the aforesaid collision with the DUKE OF YORK. Petitioner further claims the benefit of limitation of liability as provided in Sections 4283, 4284, 4285, and 4286 of the Revised Statutes (46 U. S. C. 183-186) and of the various statutes supplementary thereto and amendatory thereof and to that end petitioner is ready and willing to proceed according to the law and pursuant to the rules of practice of the Supreme Court of this Honorable Court.

Thirteenth. Petitioner, as a sovereign, is not required to give security and is exempt from providing bonds or stipulations of value pursuant to the provisions of 28 U. S. C. 2408.

Fourteenth. All and singular, the premises are true and

within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

[fol. 6] Wherefore, petitioner prays:

1. That the Court cause due appraisement to be made of the amount or value of petitioner's interest in the USNS HAITI VICTORY.

2. That the Court enter an order directing the issuance of a monition against all persons claiming or who may have claimed damages for any and all loss, damage, injury or destruction arising, occasioned, incurred by, or resulting from the aforesaid collision, citing them to file their claims with the clerk of the court and to serve on or mail to the proctors for the petitioner copies thereof on or before the date to be named in said writ and to make due proof of their respective claims; further to appear and answer the allegations of this petition according to the law and practice of this court at or before a time certain to be fixed by said monition.

3. That notice of the monition in the form prescribed by Supreme Court Admiralty Rule 51, as amended, shall be published in the newspaper specified by the rule of this Court for legal publication, and also in a newspaper of general circulatio in the United Kingdom, published at London, once each week for four successive weeks before the return date of the monition.

4. That the Court will issue its injunction restraining prosecution of any and all suits, actions and proceedings that may be already begun to recover damages arising out of, occasioned by, or consequent upon the aforesaid collision or arising during the voyage on which the USNS HAITI VICTORY was then engaged, and further restraining the commencement or prosecution hereafter of any suit, action, or legal proceeding of any nature or description whatsoever, except in the present proceeding, against the petitioner or its agents or representatives or against the USNS HAITI VICTORY in respect of any claim or claims arising out of the aforesaid voyage or aforesaid collision.

[fols. 7-8] 5. That the Court in this proceeding will adjudge that the petitioner is not liable to any extent for any loss, damage, injury, or for any claim whatsoever in any way arising out of or in consequence of the aforesaid

voyage or the aforesaid collision; or if the petitioner be adjudged liable then such liability be limited to the amount of the value of petitioner's interest in the USNS HAITI VICTORY and her pending freight as of the ending of her voyage at Bremerhaven and that the petitioner be discharged of all further liability upon the payment of this amount and that all moneys decreed to be paid be divided pro rata among such claimants as may duly prove their claims before this Court, saving to all parties any priorities to which they may be legally entitled; further, that a decree thereupon be entered discharging petitioner from all further liability.

6. That petitioner may have such other or further or different relief as the justice of the cause may require.

A. Carter Whitehead, United States Attorney,
United States Courthouse, Norfolk, Virginia.

Verification (omitted in printing).

[fol. 9] SCHEDULE A TO PETITION

Deaths

1. Mary Margaret Ansdell, "South Green", Warborough, Oxford, British Subject.

2. Gilda Ida Jordet, 1603 Pine Avenue, Rocky Ford, Colorado, U. S. A., Citizen of USA.

3. Berneice Viola Larson, 1613 Liberty Street, La Crosse, Wisconsin, U. S. A., Citizen of USA.

4. Kürt Wilhelm Friedrich Fromm, Oldenburg/O, Efferstrasse 2/8, Germany, Of German Nationality.

5. Rose Anne Spring, 88 Hansa Allee, Frankfurt-on-Main, Germany, Citizen of USA.

Missing

Dale M. Chaney, 2nd Lt., U. S. Air Force, Citizen of USA.

Ferdinand Vodicka, (Address not given on passenger list), German National.

Miss Laucheiner (Lwuchainer), (Address not given on passenger list), German National.

[fol. 10] SCHEDULE B TO PETITION

Personal Injuries

1. Mr. Jacobus Held, Merlen Street 78, The Hague, Holland.

2. Lt. Joseph Donald Baca, 3rd Air Postal Squadron, 1604 Central Avenue, S. E., Albuquerque, New Mexico, U. S. A.

3. Mr. Joseph Fassebender, Michaelstrasse 61, Neuss am Rhein, Germany.

4. Mr. Hendrick Jocken Hoogkamp, 6 Cattsstreet, Heilo, Holland.

5. Mr. Thomas David Moors, 37 Harbour Crescent, Harwich, England.

6. Dowager Countess Frances Pellew of Exmouth, of Poundgate Lodge, Crowborough, Sussex, England.

7. Gunter Hartmann, Wurpertal, Barmeu, Germany.

8. Arthur Goodman, The Netherlands, Bridge Road, Long Sutton, Spalding, Lincs.

9. Karl H. Nickolaus Bensemann, Schwachhauser-Heer Str. 212, Bremen, Germany.

[fol. 11] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

[Title omitted]

ORDER DIRECTING ISSUANCE OF MONITION AND ENJOINING SUITS—June 18, 1953

A petition having been filed herein on June 18th, 1953, by the United States as owner of the USNS HAITI VICTORY, claiming the benefit of limitation of liability provided for in 46 U. S. C. 183-189 and 46 U. S. C. 789, and also contesting its liability independently of the limitation of liability, claimed under those statutes for any and all losses, damages, deaths or injuries occasioned by or resulting from the collision between the DUKE OF YORK and the USNS HAITI VICTORY on May 6, 1953, and the petition also stating

the facts and circumstances on which said exoneration and limitation are claimed; and it appearing that claims have been made or are about to be made against the petitioner for loss, damage, injury or destruction alleged to have been incurred in consequence of said collision; now, on motion of A. Carter Whitehead, United States Attorney, proctor for petitioner, it is

Ordered that a monition issue out of and under the seal of this Court against all persons claiming damages for any and all losses, damages, deaths and injuries occasioned by or resulting from the collision between the DUKE OF YORK and the USNS HAITI VICTORY on May 6, 1953, citing them and each of them to appear before this Court and file their respective claims in writing and under oath with the clerk of this Court at the United States Courthouse, Norfolk, Virginia, on or before the 15th day of October, 1953, at 10 o'clock in the forenoon of that day and to serve copies thereof on the proctor for the petitioner on or before the return date of the monition and to prove the same in accordance with the rules and practice of this Court on notice to all parties and with liberty also to any such claimants [fol. 12] who shall have presented their claims to said clerk of this Court under oath to answer said petition; and it is further

Ordered that notice of such monition in substantially the form provided by Rule 51 of the Rules of Practice in Admiralty and Maritime Cases shall be published in the Virginian Pilot newspaper once each week for four successive weeks before the return date of the monition and that it be also published in the London Times newspaper once each week for four successive weeks before the return date of the monition and it is further

Ordered that petitioner, not later than the day of the second publication of said notice in the Virginian Pilot shall mail a copy of the notice provided for by Rule 51 of the Rules of Practice in Admiralty and Maritime Cases to:

(1) Every claimant set forth in Schedule A annexed to said petition and to their proctors or attorneys, if known;

(2) Such other persons or corporations, if any, as

are known to have any claim against the USNS HAITI VICTORY or the petitioner; and

(3) The personal representative or next of kin, if known, of all persons known to have lost their lives in said disaster, together with a copy of Rule 52 of the Rules of Practice in Admiralty and Maritime Cases, as amended, and to the decedents at their last known addresses and also to any person who shall have been known to have made any claim or account of such death, together with a copy of Rule 52 of the Rules of Practice in Admiralty and Maritime Cases; and it is further

Ordered that except in the present proceeding, the beginning or prosecution of any and all suits, actions or proceedings of any nature or description whatsoever against the petitioner or USNS HAITI VICTORY or either of them, in respect of any claim arising out of the collision between [fol. 13] the DUKE OF YORK and the USNS HAITI VICTORY which occurred on May 6, 1953, be and they hereby are stayed and restrained until the hearing and determination of this proceeding; and it is further

Ordered that service of this order as a restraining order be made within this district in the usual manner or in any other district by the United States marshal for such district by delivering a copy of this order to the person or persons to be restrained or to his or their respective proctors or attorneys; or by registered mail to persons who are outside the districts.

Albert V. Bryan, United States District Judge.

Alexandria, Va., Dated June 18, 1953.

[fol. 14] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

MONITION—Filed July 28, 1953

The President of the United States of America to the Marshal of the United States District Court for the Eastern District of Virginia, greeting:

Whereas, a petition was filed in the United States District Court for the Eastern District of Virginia at Norfolk on the 18th day of June, 1953, by the United States, as owner of the USNS HAITI VICTORY for exoneration from or limitation of liability concerning the loss, damage, loss of life, injury or destruction occasioned by or resulting from the collision between the DUKE OF YORK and the USNS HAITI VICTORY on May 6, 1953, or otherwise arising from the voyage on which the USNS HAITI VICTORY was then engaged for the reasons mentioned in said petition, and praying that a monition issue out of this Court citing all persons claiming damages by reason of the matters aforesaid to file their respective claims with the Clerk of this Court and to serve or mail to the proctors for petitioners a copy thereof on or before the 15th day of October, 1953, at 10:00 o'clock in the forenoon of that day and answer the allegations of the said petition; and

Whereas, the said Court having directed by an order made and entered on June 18, 1953, that a monition issue against all persons claiming damages for any loss of life, destruction, damage or injury occasioned by such sinking or arising during said voyage citing them to file their respective claims with the Clerk of this Court and serve or mail to the proctors for petitioners a copy thereof on or before October 15, 1953, at 10:00 o'clock in the forenoon of that day;

[fols. 15-16] You are therefore commanded to cite all persons claiming damages for any loss, damage, injury, loss of life or destruction done, occasioned or incurred by said sinking or upon said voyage to file their respective

claims with the Clerk of this Court and to serve or mail to the proctors for the petitioners a copy thereof on or before October 15, 1953, by publishing notice of such monition in substantially the form provided by Rule 51 of the Rules of Practice in Admiralty and Maritime cases in the Norfolk Virginian Pilot newspaper once each week for four successive weeks before the return date of the monition and also in the London Times newspaper once each week for four successive weeks before the return date of the monition.

You are also commanded to cite such claimants to appear and answer the petition herein on or before said last named date or within such further time as said Court may grant and to have and receive such relief as may be due.

Witness the Honorable Albert V. Bryan, Judge of the United States District Court for the Eastern District of Virginia, this 28th day of July, 1953.

Walkley E. Johnson, Clerk, by P. J. Riley, Jr., Deputy Clerk.

[fol. 17] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

[Title omitted]

CLAIM FOR DAMAGES—Filed August 6, 1953

And now come the claimants, W. G. Haslam, C. B. Langley, Mrs. V. E. Langley, B. M. White, K. S. Warren, H. A. Roberts, M. J. Ball, D. J. Hunter, H. R. Greaves, J. Haslock, L. Monkton, J. C. B. Exton, E. J. O'Sullivan, A. E. Roberts, D. Gower, B. R. Cook, Marcia Matthews, Gerald C. Hale, Cahn & Bendit, Ltd., and Hans Roeder, by their attorneys John W. Oast, Jr. and Dow & Symmers, and in accordance with the stipulation between the proctors for the United States of America, Lester S. Parsons, Jr., United States Attorney, and proctors for the said claimants, John W. Oast, Jr. and Dow & Symmers, make their respective claims against the above named United States of America as owner of the said steamship USNS HAITI VIC-

TORY for their respective damages, resulting from the loss of personal effects as per the schedule thereof hereto attached and hereby made a part hereof per the aforesaid stipulation.

Said claimants respectively aver that they are respectively individuals, corporations and/or partnerships respectively residing or doing business in England, United States of America or other countries as set forth in the annexed schedule and were respectively passengers and/or owners of cargo and/or baggage and/or personal effects on board the S/S DUKE OF YORK, the steam ferry owned and operated by the British Railways Ltd. on May 6, 1953, while the said vessel was on a voyage between Holland and Harwich, England; and when the said USNS HAITI VICTORY collided with the S/S DUKE OF YORK at approximately 4:16 A. M. on said May 6, 1953, at a point about [fol. 18] one mile off of Galloper Lightship in the English Channel with the result that the said steamship S/S DUKE OF YORK was cut and broken in two parts, the said claimants respectively suffered their respective damages as set forth in their respective schedules hereto attached and made a part of this claim as fully as if herein repeated in words and figures.

The said claimants aver that the said collision was not caused or contributed to by any fault or wrongdoing by the said claimants respectively, but was wholly due to the fault and negligence of those in charge of the said USNS HAITI VICTORY who were then employees of the United States of America acting in the scope of their employment in and about the navigation of the said USNS HAITI VICTORY.

Wherefore, the said claimants respectively present their respective claims for damages and interest thereon as set forth in the aforesaid schedule hereto attached.

John W. Oast, Jr., Proctor for Claimants.

Duly Sworn to by John W. Oast, Jr. Jurat omitted in printing.

Claimant	Address	Nature of Loss	Status of Claimant	Amount of Claim

SCHEDULE

Claimant	Address	Nature of Loss	Status of Claimant	Amount of Claim
1. Haslam W. G.	14 Greystoke Lodge Hangar Lane, W. 5.	personal effects	passenger	$66.00
2. Langley C. B.	26 Cambridge Park Court Twickenham	personal effects	passenger	86.60
3. Langley Mrs. V. E.	–do–	personal effects	passenger	182.28
4. White B. M.	20 Crawford Gardens, Palmers Green, N. 13.	personal effects	passenger	20.70
5. Warren K. S.	8 Cowdrey Close, Enfield, Middlesex	personal effects	passenger	103.44
6. Roberts H. A.	20 Overbury Avenue, Beckenham	personal effects	passenger	80.82
7. Ball M. J.	50 Drapers Road, Enfield, Middlesex	personal effects	passenger	24.22
8. Hunter D. J.	62 Fairdene Road, Coulsdon, Surrey	personal effects	passenger	91.32
9. Greaves H. R.	30 Glenthorne Avenue, Croydon, Surrey	personal effects	passenger	38.20
10. Haslock J.	15 Barnsbury Crescent, Tolworth, Surbiton	Personal effects	passenger	183.46
11. Monkton L.	30 Dallas Road, Hendon, N. W. 4.	personal effects	passenger	4.60
12. Exton J. C. B.	44 Manor Way, Ruislip, Middlesex	personal effects	passenger	17.48
13. O'Sullivan E. J.	48 Southbourne Avenue, Colindale, N. W. 9.	personal effects	passenger	43.56
14. Roberts A. J.	30 Merchiston Road, Catford, S. E. 6.	personal effects	passenger	10.48
15. Gower D.	14 Station Road, Hampton Wick, Surrey.	personal effects	passenger	66.56
16. Cook B. R.	27 Cambridge Park Court Twickenham	personal effects	passenger	11.90
17. Matthews, Marcia	Staithe, Coast Road, West Mersea, England	baggage and personal effects	passenger	2,000.00
18. Hale, Gerald C.	Treforest, Glamorgan	personal effects	passenger	140.00
19. Cahn & Bendit, Ltd.	51/55 Weymouth St., London, W. 1.	clips & frames ladies handbags	consignee	649.60
20. Roeder Hans	Hamburg, Germany	personal effects	passenger	226.80

[fol. 37] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

CLAIM OF L. T. SEAWELL, JR., ADMINISTRATOR OF THE ESTATE OF FERDINAND VODICKA, DECEASED—Filed September 29, 1953

Now comes L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodica, Deceased, and states as follows:

I am a resident of the City of Norfolk, Virginia, and the Administrator of the Estate of Ferdinand Vodicka, Deceased, having qualified as such in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, on September 10, 1953.

On May 6, 1953 the said Ferdinand Vodicka while traveling as a paid passenger on board the steamship DUKE OF YORK lost his life as a result of the collision between the steamship DUKE OF YORK and the USNS HAITI VICTORY in the English Channel.

I am informed and believe that the collision between the steamship DUKE OF YORK and the USNS HAITI VICTORY, and the subsequent loss of life of Ferdinand Vodicka was not caused by or contributed to through any fault or negligence on the part of the said Ferdinand Vodicka, but was caused solely or contributed to by the fault and negligence of the petitioner, United States of America, as owner of the USNS HAITI VICTORY, its servants, agents, or employees in charge of said vessel and/or the United States of America or its operating agencies, and by and through the unseaworthiness of the USNS HAITI VICTORY.

I, as Administrator of the Estate of Ferdinand Vodicka, Deceased, do hereby make claim for damages for death and loss of personal effects of the said Ferdinand Vodicka, and for the conscious pain and suffering suffered by the [fol. 38] said Ferdinand Vodicka prior to his death in the total sum of One Hundred Fifty One Thousand Five Hundred Dollars ($151,500.00), no part of which has been paid.

for the benefit of the distributees of his estate and any others that may be entitled to participate therein.

L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodicka, Deceased.

Hughes, Little & Seawell, Proctors for Claimant, 936 Wainwright Bldg., Norfolk, Virginia.

Duly sworn to by L. T. Seawell, Jr. Jurat omitted in printing.

[fol. 39] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

ANSWER OF L. T. SEAWELL, JR., ADMINISTRATOR OF THE ESTATE OF FERDINAND VODICKA, DECEASED—Filed September 29, 1953

To the Honorable Albert V. Bryan, Judge of the Court aforesaid:

The answer of L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodicka, Deceased, to the petition of the United States of America, as owner of the USNS HAITI VICTORY for exoneration from or limitation of liability, alleges on information and belief, as follows:

First: Respondent duly qualified as Administrator of the Estate of Ferdinand Vodicka, Deceased, on the 10th day of September, 1953, in the Circuit Court of the City of Norfolk, Virginia, a court of competent jurisdiction, as is shown by the attached certificate of qualification, and as such is the legal administrator of the estate of the said decedent.

Second: Answering the allegations of the first article of the said petition, respondent admits same.

Third: Answering the allegations of the second article

of said petition, respondent denies that the USNS HAITI VICTORY was tight, staunch, strong and seaworthy and in all respects fitted for the voyage. Respondent calls for proof of the remaining allegations of said article.

Fourth: Answering the allegations of the third article of said petition, respondent admits same.

Fifth: Answering the allegations of the fourth article of said petition, respondent is not advised and calls for strict proof of said allegations, if material.

[fol. 40] Sixth: Answering the allegations of the fifth article of said petition, respondent denies that those in charge of the USNS HAITI VICTORY were competent and skilled, or that the USNS HAITI VICTORY was in all respects seaworthy, properly manned, equipped and supplied. On information and belief respondent further denies the facts alleged relative to the radar the vessel's course changes and signals prior to and at the time of the collision and calls for strict proof as to the remaining allegations of said article.

Seventh: Answering the allegations of the sixth article of said petition, respondent denies same. On the contrary this respondent alleges that petitioner's negligence, carelessness and inattention, or the negligence, carelessness and inattention of petitioner's agents, servants or employees, and/or the unseaworthy condition of the USNS HAITI VICTORY was the sole or contributing cause of respondent's decedent's death. Respondent is not informed as to the specifications of fault numbered one through eleven alleged against the DUKE OF YORK and those in charge of her, but calls for strict proof thereof.

Eighth: Answering the allegations of the seventh article of said petition, respondent denies the same, and affirmatively states that knowledge of the master and operating officer, among other servants of the petitioner, United States of America, of negligence which contributed in any way to the collision between the DUKE OF YORK and the USNS HAITI VICTORY must be deemed conclusively the privity or knowledge of the owner of the said USNS HAITI VICTORY.

Ninth: Answering the allegations of the eighth article of said petition, respondent alleges that Ferdinand Vodicka lost his life as a result of this collision. Respondent states

that it has no information concerning the remaining allegations of the eighth article and calls for proof thereof.

Tenth: Answering the allegations of the ninth article of said petition, respondent is not informed as to the allegations contained therein, and calls for strict proof thereof.

[fol. 41] Eleventh: Answering the allegations of the tenth article of said petition, respondent is not informed as to the allegations contained therein and calls for proof thereof.

Twelfth: Answering the allegations of the eleventh article of said petition, respondent is not informed thereof, and calls for proof, if material.

Thirteenth: Answering the allegations of the twelfth article of said petition, respondent denies that the said petitioner is entitled to the benefits of limitation of liability provided by applicable statutes or any rules of practice of the Supreme Court and of this Honorable Court.

Fourteenth: Answering the allegations of the thirteenth article of said petition, respondent admits same.

Fifteenth: Answering the allegations of the fourteenth article of said petition, this respondent admits the jurisdiction of this Honorable Court but denies that the premises all and singular are true.

Sixteenth: In answer to the wherefore clause of said petition, this respondent believes, and therefore alleges, that the prayers contained therein should be denied and the said petition for limitation of liability should be dismissed.

And further answering, respondent states that Ferdinand Vodicka was an Austrian National, who boarded the DUKE OF YORK, after having duly purchased and paid for a ticket at the Hook of Holland, on the 5th day of May, 1953, for a voyage to Harwich. During said voyage, and while said Ferdinand Vodicka was travelling as a passenger, the DUKE OF YORK was collided with by the USNS HAITI VICTORY on the early morning of May 6, 1953. As a result of the said collision, the DUKE OF YORK was almost cut in two and was otherwise seriously damaged, there were many personal injuries, several of those on the DUKE OF YORK lost their lives, and the passengers on the DUKE OF YORK sustained a considerable loss of baggage and other personal effects. Respondent's decedent was free from any negli-

ence, carelessness or inattention causing or contributing n any way to said collision and resulting losses. Said col- ision was due solely or was contributed to by the fault, egligence, carelessness and inattention of the United States of America, as owner, the managing agent or agents f the USNS HAITI VICTORY, her officers, employees and fol. 42] crew

(a) In failing to maintain said vessel in a safe and seaworthy condition;

(b) In failing to properly furnish and equip said vessel with proper life saving equipment, amongs other things;

(c) In ordering and permitting said vessel to proceed on the voyage in an unseaworthy, unsafe condition;

(d) In failing to promulgate and enforce proper regulations for the safe operation of said vessel;

(e) In permitting said vessel to be operated, in view of existing weather conditions, at a dangerous, excessive and improper speed;

(f) In permitting said vessel to proceed through a mist or conditions of reduced visibility without using the radar with which she was equipped;

(g) In permitting said vessel to proceed through mist and conditions of reduced visibility without sounding fog signals;

(h) In failing to navigate in accordance with whistle signals;

(i) In failing to have trained and competent officers and crew properly stationed;

(j) In failing to seasonably stop and reverse her engines;

(k) In failing to navigate in accordance with the accepted rules of navigation;

(l) In other respects to be brought out at the trial hereof.

Respondent's decedent at the time of his death was a trong, robust man, with a very responsible position and rospects for substantial advancement in his business.

Respondent's decedent left surviving him his wife, Mrs. largarete Vodicka, and two daughters, Mrs. Margarete

Maider and Helga Vodicka, who have been deprived of his care, guidance, love, protection, financial support and the expectancy of future pecuniary benefit all to their loss and damage. Said survivors have sustained damages in the sum of at least One Hundred Fifty Thousand Dollars ($150,000.00), no part of which has been paid. In addition thereto certain personal property and effects of the respondent's decedent of the value of Fifteen Hundred Dol-
[fol. 43] lars ($1500.00) were lost.

Respondent, by reason of the facts aforesaid, has a right of action for the decedent's wrongful death under and pursuant to the Death On The High Seas Act, Title 46 U. S. C. A. Sec. 761, the General Admiralty Law, and under other statutes of the United States or other nations governing such claims.

Respondent therefore states that all and singular the premises alleged in the further answering clause are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, respondent prays that the said petitioner may be adjudged liable for the wrongful death of said Ferdinand Vodicka, reserving unto respondent all rights and benefits to which he is entitled under and by virtue of the aforesaid Death On The High Seas Act, The General Admiralty Law, and other statutes of the United States and other nations governing this claim; that a judgment may be ORDERED herein for respondent for the amounts claimed against said petitioner and petitioner's interest in the said USNS HAITI VICTORY; and that respondent may have such other and further relief as may be just and proper in the premises.

L. T. Seawell, Jr., Administrator of the Estate of Ferdinad Vodicka, Deceased, By L. T. Seawell, Jr.

Duly sworn to by L. T. Seawell, Jr. Jurat omitted in printing.

[fols. 43a-81] CERTIFICATE OF QUALIFICATION

VIRGINIA:

In the Clerk's Office of the Circuit Court of the City of Norfolk, on the 10th day of September, 1953.

I, W. R. Hanckel, Clerk of the Circuit Court of the City of Norfolk, in the State of Virginia, do certify that it appears from the records of the said Court, on file in my office, that L. T. Seawell, Jr., duly qualified, on the 10th day of September, 1953, as Administrator of the estate of Ferdinand Vodicka, deceased, and duly executed and acknowledged a bond as prescribed by law, in the penalty of $100.00, conditioned according to law, without surety, the law requiring none of him as such.

Given under my hand and the seal of said court, the day and the year first herein above written.

[Seal.] W. R. Hanckel, Clerk.

[fols. 82-183] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

CLAIM OF JOHN B. MESKERS—Filed October 8, 1953

Wout Meskers
Wholesale Bulbgrowers and Exporters
Julianadorp (N.-H.) - Holland
Phone (K 2235) No. 269

Hyacinths - Tulips - Daffodils - Crocuses, Etc.
Cable-Address: Wout Meskers, Julianadorp-Holland

The Clerk, United States Court House
Granby Street, Norfolk, Virginia

Thundersley, 5-10-'53
Essex, England.

Office of the Judge Advocate
Claims Branch, Hq. USAREUR
APO 403, U. S. Army

Dear Sirs,—

I am writing under oath that I was a passenger of the "H. S. Duke of York" at its collision with the "USNS Haity Victory" on the 6th of May 1953, as a consequence

of which I lost the following personal affects belonging to me:

	£ s. d.
1 pair pyjamas	1.10.—
9 shirts	6.15.—
2 suits	29.—.—
3 sets underwear	2. 5.—
6 pair socks	1.15.—
20 handkerchiefs	—.14.—
1 wristwatch (gold)	15.—.—
1 expanding suitcase (revelation)	5.15.—
Business stationary	2.15.—
1 pair shoes	3.—.—
1 pair sandels	1.10.—
200 cigarettes (Dutch)	—.15.—
100 cigarettes (English)	—.12. 6
10 cigars (Dutch)	—. 5.—
1 cardigan (jaeger)	2. 5.—
I therefore file a claim for the amount of	73.16. 6

against the owners of the "Haiti Victory."

Yours Faithfully, John B. Meskers.

English address: John B. Meskers, c/o N. C. Newman, "Shenstone", Grand View Rd,, Thundersley, Essex.

[fol. 184] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

CLAIM OF BRITISH TRANSPORT COMMISSION FOR $1,500,000.00 —Filed October 14, 1953

And now, British Transport Commission makes claim against the petitioner, The United States of America, and

presents the proof of claim against the petitioner herein, as follows:

1. The claimant, British Transport Commission, at all times hereinafter mentioned was, and still is, a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland, and maintains a principal office and place of business at Paddington Station, London, W. 2, England.

2. At all times material herein the claimant was, and still is, the owner of the passenger-cargo vessel DUKE OF YORK, a twin screw vessel of British registry, of the burden of 3,759 gross tons and 1,938 net tons, 339′ in length, 52′ in beam and 18′ in depth, which said vessel was, at all times prior to the events hereinafter described, tight, staunch, strong and in all respects seaworthy.

3. On the early morning of May 6, 1953 the said SS DUKE OF YORK while proceeding through the North Sea, en route from the Hook of Holland to Harwich, England, came into collision with the U. S. N. S. HAITI VICTORY, a vessel owned and operated by the petitioner herein as a public vessel of the United States, in the vicinity of Galloper Lightship.

[fol. 185] 4. As a result of the said collision the bow of the DUKE OF YORK was severed and grievous damage was sustained to the vessel, by reason of which she was required to receive and accept the assistance of salving vessels to bring her safely to the port of Harwich. Further, certain passengers on board the DUKE OF YORK were killed, injuries were sustained by various other passengers and loss and damage was sustained to cargo on board. The total amount of the claims arising from these losses, damages, injuries, death and destruction are not exactly known or determined presently but, so far as can be ascertained, will amount to approximately $1,500,000.00.

The aforesaid damages, injuries, losses, death and destruction resulting from the collision above mentioned were not caused or contributed to by any fault or negligence of this claimant or of anyone for whose acts or omissions this claimant is or was responsible but were done, occasioned or incurred with the privity or knowledge of and were caused by the petitioner and its managing officers and supervising agents and the master of the U. S. N. S. HAITI VICTORY, and

of those in charge of her. The circumstances of the said collision and the fault and negligence of the petitioner in respect thereof are set forth in the answer of claimant to the petition filed herein and the allegations of the said answer are hereby referred to and made part of this claim.

5. By reason of the premises claimant has suffered damages, so nearly as can be presently ascertained, in the sum of $1,500,000.00, which sum may be increased by the ascertainment or realization of claims which now have been or may hereafter be asserted against petitioner.

[fol. 186] Wherefore, claimant, reserving the right to file a supplemental claim herein, prays that its claim for One Million Five Hundred Thousand ($1,500,000.00) Dollars be approved and allowed by the Court, with interest and costs, and for such other and further relief as to the Court may seem just and proper.

Baird, White & Lanning, Edwin Longcope, McNutt & Nash, Proctors for Claimant, British Transport Commission, Office and P. O. Address, National Bank of Commerce Building, Norfolk 10, Virginia.

[fol. 187] *Duly sworn to by Edward R. Baird. Jurat omitted in printing.*

[fol. 188] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION.

[Title omitted]

ANSWER—Filed October 14, 1953

The Answer of the claimant, British Transport Commission, to the Petition of the United States of America, in a cause of exoneration from and limitation of liability, civil and maritime, alleges upon information and belief as follows:

First: It denies knowledge or information sufficient to form a belief as to the allegations of the First Article of the Petition and demands proof thereof.

Second: It denies knowledge or information sufficient to form a belief as to the allegations of the Second Article of the Petition and demands proof thereof.

Third: It admits the allegations of the Third Article of the Petition.

Fourth: It denies knowledge or information sufficient to form a belief as to the allegations of the Fourth Article of the Petition and demands proof thereof.

Fifth: It admits that the HAITI VICTORY was in collision with the DUKE OF YORK in the early morning of May 6, 1953, in the North Sea and in the vicinity of Galloper Lightship, as a result of which great damage and injury was caused to the DUKE OF YORK and to passengers and persons on board said vessel. Except as so admitted, or elsewhere in this answer alleged, it denies the allegations of the Fifth Article of the Petition.

[fol. 189] Sixth: It denies the allegations of the Sixth Article of the Petition.

Seventh: It denies the allegations of the Seventh Article of the Petition.

Eighth: It admits that the DUKE OF YORK was cut in two by the collision and that her owners, the claimants herein, have filed claim against Petitioner for damages of $1,500,000.00, reserving leave to supplement the same; that eight persons were killed on board the DUKE OF YORK as a result of the collision; that other persons on board were injured, and that claims have been asserted for loss and damage to cargo, baggage and personal effects on board the vessel. Except as so admitted claimant denies knowledge or information sufficient to form a belief as to the allegations of the Eighth Article of the Petition.

Ninth: It denies knowledge or information sufficient to form a belief as to the allegations of the Eighth Article of the Petition and demands proof thereof.

Tenth: It denies knowledge or information sufficient to form a belief as to the allegations of the Tenth Article of the Petition and demands proof thereof.

Eleventh: It admits that claims have been or will be filed against Petitioner in consequence of losses and damages sustained to said vessel, its passengers and cargo, but it denies knowledge or information sufficient to form a belief as to whether the total of these claims does or

will exceed the value of Petitioner's interest in the HAITI VICTORY and her pending freight and demands proof thereof.

Twelfth: It denies that Petitioner has any valid defense in fact and on the law, to its asserted liability for the losses and damages resulting from the collision herein described, and further denies that Petitioner is entitled [fol. 190] to the benefits of limitation of liability as provided in Sections 4283, 4284, 4285 and 4286 of the Revised Statutes (46 U. S. C. A. 183-186) and of the various statutes supplementary thereto and amendatory thereof.

Thirteenth: It admits the allegations of the Thirteenth Article of the Petition.

Fourteenth: It admits the jurisdiction but denies that all and singular the premises of the Petition are true.

Further answering the petition claimant avers, upon information and belief, that the true facts relative to the collision therein described are as follows:

Fifteenth: On the early morning of May 6, 1953, a twin-screw cargo passenger vessel of 3759 gross tons and 1938 net tons, 339 feet in length and 52 feet in beam, being in all respects tight, staunch, strong and seaworthy, was proceeding across the North Sea, enroute from the Hook of Holland to Harwich, England, on her regular service between these ports. She was carrying 437 passengers and miscellaneous cargo. The vessel was showing regulation navigations lights and also her deck lights. There was a light northwesterly breeze, a force 2, the sea was moderate, with a slight swell and the tide was flooding southwesterly, at about a ½ knot. The master was on the bridge, in charge of the vessel's navigation. A competent helmsman was at the wheel and a proper lookout was being maintained.

In the course of the DUKE OF YORK's crossing patchy fog had been encountered from time to time. At 0330 the vessel commenced sounding fog signals and at 0412 the engines were reduced to half speed.

[fol. 191] Shortly thereafter, and while the DUKE OF YORK was so proceeding, a single long blast was heard, bearing about four points on the port bow. The DUKE OF YORK rang her engines to slow and answered with a single long blast. Shortly thereafter the masthead lights and green light of the other vessel, which later proved to be the HAITI

VICTORY, appeared on the same bearing and close aboard. The DUKE OF YORK put her engines full astern and sounded three blasts, and put her wheel hard to starboard, but the HAITI-VICTORY came on and with great force her bow struck the port side of the DUKE OF YORK, just forward of the latter's bridge, at an angle of about six points leading aft, and penetrated almost to the starboard side of the DUKE OF YORK. The collision occurred at about 0418 and in the vicinity of Galloper Light Vessel.

The HAITI VICTORY held her bow into the DUKE OF YORK for a while, then withdrew and manoeuvred alongside and assisted in removing passengers from the DUKE OF YORK. Five passengers were killed in the collision; one was injured and subsequently died, and two were missing and are presumed to have been injured and loss or damage was sustained to cargo, baggage and personal effects on board the DUKE OF YORK.

The bow of the DUKE OF YORK fell off and sank while the HAITI VICTORY was still alongside removing passengers and crew. Prior thereto tug assistance had been summoned by the DUKE OF YORK and three tugs arrived on the scene after the bow of the DUKE OF YORK had fallen off. When it was observed that the DUKE OF YORK would remain afloat she was taken in tow by the tugs and was subsequently brought safely into the harbor of Harwich. [fol. 192] Further answering the petition claimant alleges, upon information and belief, as follows:

Sixteenth: The collision described by Petitioner in Article Fifth hereof, and the losses, damages, injuries, deaths and destruction resulting therefrom, including those mentioned in the claim filed by this claimant, were not caused or contributed to by any fault or negligence on the part of this claimant, or of any one for whose acts or omissions this claimant was or is responsible, but were done, occasioned or incurred with the privity or knowledge of and were caused by the Petitioner and its managing officers and supervising agents and the master of the HAITI VICTORY, and those in charge of her, in the following respects, among others, which will be shown on the trial:

1. She was not in charge of a competent master;
2. She was not in charge of competent persons;

3. She was unseaworthy;

4. She was proceeding at excessive speed in fog;

5. She was maintaining full speed on approaching a fog bank;

6. She failed to make proper use of her radar;

7. As the burdened vessel in a crossing situation she failed to take any or proper action to navigate clear of the DUKE OF YORK.

8. She altered course with respect to a vessel not then in sight;

9. She failed to sound proper whistle signals;

10. She failed to maintain a proper or competent lookout;

11. She failed to take proper precautions to avoid collision when the danger of collision was or should have been apparent.

[fol. 193] Seventeenth: All and singular, the premises are true.

Wherefore, claimant prays that the petition herein be dismissed with costs and that petitioner's prayer for exoneration from or limitation of liability be denied; that petitioner may be held liable in full to claimant for all liabilities, losses, damages and destruction sustained in the premises; and that claimant may have such other and further relief as to the Court may seem just and proper.

Baird, White & Lanning, Edwin Longcope, McNutt & Nash, Proctors for Claimant, British Transport Commission, Office & P. O. Address, National Bank of Commerce Building, Norfolk 10, Virginia.

[fols. 194-266] *Duly sworn to by Edward R. Baird. Jurat omitted in printing.*

[fols. 267-389] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

CERTIFICATE OF PUBLICATION—Filed October 22, 1953

THE TIMES

1785

Advertisement Department
The Times Publishing Company, Limited,
Priting House Square,
London, E.C.4.

Telephone: Central 2000

This is to certify that the attached advertisement appeared in the issues of The Times of August 24, 31, Sept. 7, 14, 1953 under the heading Public Notices.

—— ——, Classified Advertisement Manager.

Note: Voucher copies of The Times for the above-mentioned date, or dates, are not available owing to restriction of printed copies by Government regulation of the use of newsprint.

United States District Court of the Eastern District of Virginia, Norfolk Division

Notice of Petitioner for Exoneration from or Limitation of Liability Filed June 18, 1953

Notice is given that the United States of America has filed a petition pursuant to Title 46, U. S. Code, sections 183-189 and 789, claiming the right to exoneration from or limitation of liability for all claims arising on the voyage of the USNS HAITI VICTORY from New York City to Bremerhaven, Germany, terminating on May 8, 1953, at Bremerhaven. All persons having such claims must file them, under oath, as provided in United States Supreme Court Admiralty Rule 52, with the Clerk of this Court, at the United States Court House at Granby Street, Post Office Building, Norfolk, Virginia, and serve on or mail to the petitioner's proctors, L. S. Parsons, Jr., United States At-

torney, and John M. Hollis, Assistant United States Attorney, at Granby Street, Post Office Building, Norfolk, Virginia, a copy on or before October 15, 1953, or be defaulted. Personal attendance is not required. Any claimant desiring to contest the claims of petitioner must file an answer to said petition, as required by Supreme Court Admiralty Rule 53, and serve on or mail to petitioner's proctors a copy.

R. A. Simpson, United States Marshal.

Admiralty Rule 52

Filing and Proof of Claim in Limited Liability Proceedings

Claims shall be filed with the Clerk of the Court in writing under oath and a copy shall be served upon the proctor for the petitioner on or before the return day of the monition. Each claim shall specify the various allegations of fact upon which the claimant relies in support of his claim, the items thereof, and the dates on which the same accrued. Within thirty days after the return day of the monition or within such time as the Court thereafter may allow, the petitioner shall mail to the proctor for each claimant (or if the claimant have no proctor the claimant himself), a list setting forth (a) the name of each claimant, (b) the name and address of his proctor or attorney (if he is known to have one), (c) the nature of his claim, i.e., whether property loss, property damage, death, personal injury, &c., and (d) the amount thereof.

Whenever an interim stipulation has been filed as provided in Rule 51, any person claiming damages as aforesaid, who shall have filed his claim under oath, may file an exception controverting the value of the vessel at the close of the voyage, or, in case of wreck, the value of her wreckage, strippings or proceeds, and the amount of her pending freight, and the amount of the interim stipulation based thereon, and thereupon the Court shall cause due appraisement to be had of the value of petitioner's interest in the vessel, or her wreckage, &c., and her freight; and if the Court finds that the amount of the interim stipulation is either insufficient or excessive, the Court shall make an order for the payment of the proper amount into Court, or,

as the case may be, for a reduction in the amount of the stipulation or for the giving of an additional stipulation.

Proof of all claims which shall be filed in pursuance of said monition shall thereafter be made before a commissioner to be designated by the Court, or before the Court as the Court may determine, subject to the right of any person interested to question or controvert the same; but no objection to any claim need be filed by any party to the proceedings; and on the completion of said proofs, the commissioner shall make report, or the Court its findings on the claims so proven, and on confirmation of said commissioner's report, after hearing any exceptions thereto, or on such finding by the Court, the moneys paid or secured to be paid into Court as aforesaid or the proceeds of said vessel, or her wreckage, &c., and freight (after payment of costs and expenses shall upon determination of liability be divided pro rata, subject to all provisions of law thereto, appertaining, amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

[fol. 390] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

ANSWER OF PETITIONER TO CLAIM OF BRITISH TRANSPORT COMMISSION—Filed April 16, 1954

The answer of the United States of America, petitioner herein, to the claim of the British Transport Commission alleges as follows:

1. Admits that the claimant, British Transport Commission, is organized and existing under the laws of the United Kingdom; that it maintains its principal office and place of business in London; but denies that the Commission is a corporation, and refers particularly to the provisions of

the statute creating it as a public authority, 10 and 11 Geo. VI, ch. 49 (1947).

2. Admits that the claimant was the owner of the DUKE OF YORK bearing the same descriptions, but denies that the said vessel was tight, staunch, strong, and in all respects seaworthy.

3. Admits the allegations of Article Third of the claim.

4. Admits the collision and the injury and claims in the amount of about $1,500,000, but denies all the other allegations of Article Fourth of the claim.

5. Denies the allegations of Article Fifth of the claim.

Further answering, and for a second separate and complete defense, petitioner alleges as follows:

6. The said collision complained of, which is the subject of the limitation petition filed herein, was occasioned by either the sole fault of the DUKE OF YORK or the joint fault [fol. 391] of both the DUKE OF YORK and the HAITI VICTORY; in which case petitioner herein alleges that it has sustained damage to its vessel in the amount of about $65,000, as nearly as can be presently ascertained, and has also been subjected to claims by passengers and members of the crews of both vessels filed herein, which presently approximate $809,714 for personal injury and death, and $45,975 for property damage other than that claimed by the DUKE OF YORK; all of which damage it prays to set off and recoup against the claimant, British Transport Commission, as owner of the DUKE OF YORK; in the manner provided by the maritime rule of divided damages as applied by courts of the United States.

Further answering, and for a third separate and complete defense, petitioner alleges as follows:

7. The DUKE OF YORK was owned and operated by a statutory agency of the Government of the United Kingdom of Great Britain and Northern Ireland, pursuant to the Transport Act of 1947, 10 and 11 Geo. VI, ch. 49, as amended by the Transport Act of 1953, 1 and 2 Eliz. II, ch. 13.

8. At the time of said collision and to date there exists between the Government of the United Kingdom of Great Britain and Northern Ireland and your petitioner an Exec-

utive Agreement signed at London on December 4, 1942, printed in 56 Stat. 1780. Pursuant to the provisions of that Agreement, any and all claims on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland or any governmental agency owning and operating the DUKE OF YORK were waived as against the United States, and pursuant to Article Second of that Agreement the claim is to be asserted in limitation proceedings for the purpose of marshalling but not for payment. Although called upon to do so, the public authority owning and operating the DUKE OF YORK has failed and refused and has contended and does still contend that its operations and its [fols. 392-410] vessels are outside the scope of the Agreement.

Wherefore, petitioner prays that the Court adjudicate such set-offs, recoupments and cross-claims against the said DUKE OF YORK and her owners, as may exist in this action, and that evidence be taken on the application of said Executive Agreement to the facts of the case and the said Agreement applied.

L. S. Parsons, Jr., United States Attorney.

To: Baird, White & Lanning, Bank of Commerce Building, Norfolk, Virginia.

Hughes, Little & Seawell, 936 Wainwright Building, Norfolk, Virginia.

Jett, Sykes & Howell, Attorneys at Law, 701 Citizens Bank Building, Norfolk, Virginia.

John W. Oast, Jr., Esq. and Messrs. Dow & Symmer, Citizens Bank Building, Norfolk, Virginia.

Vandeventer, Black & Meredith, Citizens Bank Building, Norfolk, Virginia.

Earl W. White, Esq., Dean Building, Norfolk, Virginia.

C. Lydon Harrell, Jr., Esq., Dickson Building, Norfolk, Virginia.

John P. Parrish, Esq., 111 South Fairfax, Alexandria, Virginia.

Certificate of service (omitted in printing).

[fol. 411] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

ORDER—May 3, 1954

This day came William B. Eley, Administrator of the Estate of Dale M. Chaney, deceased, L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodicka, deceased, Juliet R. Chamberlain, and certain personal injury and baggage claimants by their respective proctors and presented their several motions for leave to file petitions herein impleading British Transport Commission as owner of the SS DUKE OF YORK, and also came the said British Transport Commission by proctors and objected thereto on the ground, among others, that such claimants have no right to implead the said Commission herein;

And the Court having heard the arguments of proctors doth reserve the objections of the British Transport Commission for hearing and determination and doth set the same for hearing on June 1, 1954 at 2:30 P. M. in the courtroom at Newport News; meanwhile, and subject to the further order of the Court, leave is hereby granted to the claimants above named and identified to file their said petitions herein, and the same are accordingly filed.

Albert V. Bryan, United States District Judge.

May 3, 1954.

[fol. 412] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

IMPLEADING PETITION OF WILLIAM B. ELEY UNDER ADMIRALTY RULE NO. 56—Filed May 3, 1954

The petition of William B. Eley, Administrator of the estate of Dale M. Chaney, against the British Transport

Commission, filed pursuant to Rule No. 56 of the Rules of Practice in admiralty and maritime cases, alleges on information and belief as follows:

First: Petitioner duly qualified as administrator of the estate of Dale M. Chaney, deceased, on the 13th day of October, 1953, in the Circuit Court of the City of Norfolk, a court of competent jurisdiction, and as such is the legal administrator of the estate of the said decedent.

Second: British Transport Commission is and was at all times hereinafter mentioned, an agency of the British Government, and was at all times hereinafter mentioned, owner and operator of the S. S. "DUKE OF YORK", and as a claimant-respondent in the original proceeding herein, is subject to the jurisdiction of this Honorable Court.

Third: On or about the 10th day of June, 1953, a petition for exoneration from or limitation of liability was filed by the United States of America as owner of the USNS "HAITI VICTORY", which said petition, among other things, alleged that on May 6, 1953, while on a voyage from Argentia to Bremerhaven, Germany, the USNS "HAITI VICTORY" was in collision with the S. S. "DUKE OF YORK", which said collision, the petition further alleged, was caused by the fault and neglect of the S. S. "DUKE OF YORK" and the persons in charge of her.

Fourth: On October 13th, 1953, petitioner filed his claim and answer in the said limitation proceeding alleging, among other things, that the said collision was caused or [fol. 413] contributed to by the fault or neglect on the part of the USNS "HAITI VICTORY", or those in charge of her.

Fifth: Petitioner further alleges that on May 6th, 1953, his decedent, Dale M. Chaney, was a citizen of the United States and a Second Lieutenant in the United States Air Force, who, on the day before, May 5th, 1953, had boarded the S. S. "DUKE OF YORK" in proper fashion at the Hook of Holland for a voyage to Harwich; that during the said voyage, and while the said Dale M. Chaney was traveling as a passenger, the S. S. "DUKE OF YORK" was in collision with the USNS "HAITI VICTORY" during the early morning of May 6th, 1953, as a result of which petitioner's decedent lost his life and all of his personal effects were destroyed.

Sixth: The foregoing collision and resulting losses were not caused or contributed to in anywise by respondent's decedent, Dale M. Chaney, but the said collision was caused or contributed to by the fault and negligence of the S. S. "DUKE OF YORK" and British Transport Commission's servants and employees in charge of her navigation in the following particulars, among others, to be shown at the trial of this cause:

1. Respondent's servants and employees who were in charge of her navigation were not attentive to their duties and were not maintaining a proper and alert lookout.

2. She was being navigated at a rate of speed which was dangerous, excessive and improper in view of the existing conditions.

3. She was proceeding through a mist or conditions of reduced visibility without the sounding of fog signals.

4. The S. S. "DUKE OF YORK" was not maintained in a safe and seaworthy condition.

5. She was proceeding through a condition of reduced visibility without using the radar with which she was equipped.

6. She was not being navigated in accordance with the accepted rules of navigation.

7. She did not seasonably stop and reverse her engines.

[fol. 414] Seventh: By reason of the foregoing collision, the estate of Dale M. Chaney has been caused to suffer damages in the amount of One Hundred and Fifty Thousand ($150,000.00) Dollars, no part of which has been paid.

Eighth: All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore the petitioner prays that process in due form issue against the British Transport Commission, citing it to appear and answer all and singular the matters and things set forth in this petition; and that if the said British Transport Commission cannot be found in this district, its

goods and chattels, or any goods and chattels of the British Government within this district may be attached, to the amount sued for in the impleading petition herein, and that this court will decree the payment by said British Transport Commission to the petitioner herein, of the sum of One Hundred and Fifty Thousand ($150,000.00) Dollars, together with interest and costs; and that the petitioner may have such other and further relief as may be just.

William B. Eley, Administrator of the Estate of Dale M. Chaney, deceased.

Vandeventer, Black & Meredith, 819 Citizens Bank Bldg., Norfolk, Virginia, Proctors for Impleading Petitioner.

Duly sworn to by William B. Eley. Jurat omitted in printing.

[fol. 415] , [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

IMPLEADING PETITION OF JULIET ROBESON CHAMBERLAIN UNDER SUPREME COURT ADMIRALTY RULE NO. 56—Filed May 3, 1954

The petition of Juliet Robeson Chamberlain against the British Transport Commission filed pursuant to United States Supreme Court Admiralty Rule No. 56 of the rules of practice in admiralty and maritime cases, alleges on information and belief as follows:

First: Petitioner is a resident of the City of Philadelphia, Pennsylvania, and on May 6, 1953, at the time of the collision here involved was a passenger on the steamship "DUKE OF YORK".

Second: British Transport Commission is and was at all times hereinafter mentioned, an agency of the British

Government, and was at all times hereinafter mentioned the owner and/or operator of the Steamship "DUKE OF YORK", and as a claimant-respondent in the original proceeding herein is subject to the jurisdiction of this Honorable Court.

Third: On or about the 10th day of June, 1953, a petition for exoneration from or limitation of liability was filed by the United States of America as owner of the U. S. N. S. "HAITI VICTORY", which said petition, among other things, alleged that on May 6, 1953, while on a voyage from Argentina to Bremerhaven, Germany, the U. S. N. S. "HAITI VICTORY" was in collision with the Steamship "DUKE OF YORK", which said collision, the petition further alleged, was caused by the fault and neglect of the Steamship "DUKE OF YORK" and the persons in charge of said vessel.

Fourth: On September 13, 1953, petitioner filed her claim and answer in the said limitation proceeding alleging, among other things, that the said collision was caused or [fol. 416] contributed to by the fault or neglect on the part of the U. S. N. S. "HAITI VICTORY" or those in charge of said vessel.

Fifth: Petitioner further alleges that on May 6, 1953, at the time of the collision here involved petitioner was a citizen of the United States and a resident of the City of Philadelphia, Pennsylvania, who on or about May 5, 1953, after having duly purchased and paid for a ticket for a voyage from the Hook of Holland to Harwich, England, boarded the steamship "DUKE OF YORK" in proper fashion at the Hook of Holland. Thereafter, during the said voyage and while your petitioner was travelling as a paid passenger, the Steamship "DUKE OF YORK" was in collision with the U. S. N. S. "HAITI VICTORY" during the early morning hours of May 6, 1953, as result of which your petitioner was caused to sustain serious and permanent personal injuries and the loss of a considerable part of her baggage and other personal effects.

Sixth: The foregoing collision and resulting losses to your petitioner were not caused or contributed to in any wise by petitioner, but the said collision was caused or contributed to by the fault and negligence of the Steamship "DUKE OF YORK" and British Transport Commission's

servants, agents and employees in charge of the navigation, of said vessel in the following particulars, among others to be shown at the trial of this cause:

(1) Respondents' servants, agents and employees who were in charge of the navigation of the Steamship "DUKE OF YORK" were not attentive to their duties and were not maintaining a proper and alert lookout.

(2) The said vessel was being navigated at a rate of speed which was dangerous, excessive and improper in view of the existing conditions.

(3) The said vessel was proceeding through a mist or conditions of reduced visibility without the sounding of proper fog signals.

(4) The said vessel was not maintianed in a safe and seaworthy condition.

(5) The said vessel was proceeding through a condition of reduced visibility without using the radar with which she was equipped.

[fols. 417-418] (6) She did not seasonably stop and reverse her engines.

Seventh: By reason of the foregoing collision petitioner has been caused to suffer damages for injuries, loss of time, medical and other expenses, and for loss of baggage and personal effects in the amount of Twenty Five Thousand Dollars ($25,000.00), no part of which has been paid.

Eighth: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, petitioner prays that process in due form of law may issue against the British Transport Commission, citing it to appear and answer all and singular the matters and things set forth in this petition; that if the said British Transport Commission cannot be found in this district its goods and chattels, or any goods and chattels of the British Government within this district, may be attached, to the amount sued for in this impleading petition, and that this Court will decree the payment by said British Transport Commission to the petitioner herein, of the sum of Twenty Five Thousand Dollars ($25,000.00), together with interest and costs; and that petitioner may

have all such other and further relief as may be just and proper in the premises.

Juliet Robeson Chamberlain, by R. Arthur Jett, of Proctors.

Jett, Sykes & Howell, 701 Citizens Bank Building, Norfolk 10, Virginia, Proctors for impleading petitioner, Juliet Robeson Chamberlain.

Duly sworn to by R. Arthur Jett. Jurat omitted in printing.

[fol. 419] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

IMPLEADING PETITION OF JOSEPH D. BACA UNDER ADMIRALTY RULE NO. 56—Filed May 3, 1954

The petition of Joseph D. Baca against the British Transport Commission, filed pursuant to Rule No. 56 of the Rules of Practice in admiralty and maritime cases, alleges on information and belief as follows:

First: British Transport Commission is and was at all times hereinafter mentioned, an agency of the British Government, and was at all times hereinafter mentioned, owner and operator of the steamship DUKE OF YORK, and as a claimant-respondent in the original proceeding herein, is subject to the jurisdiction of this Honorable Court.

Second: On or about the 10th day of June 1953, a petition for exoneration from or limitation of liability was filed by the United States of America as owner of the USNS HAITI VICTORY, which said petition, among other things, alleged that on May 6, 1953 while on a voyage from Argentia to Bremerhaven, Germany, the USNS HAITI VICTORY was in collision with the steamship DUKE OF YORK, which said collision, the petition further alleged, was caused

by the fault and neglect of the steamship DUKE OF YORK and the persons in charge of her.

Third: Petitioner has heretofore filed his claim, and on or about March 23, 1954 filed his amended claim and answer in the limitation proceeding alleging, among other things, that the said collision was caused or contributed to by the fault or neglect on the part of the USNS HAITI VICTORY, or those in charge of her.

Fourth: Petitioner further alleges that on May 6, 1953 he was a citizen of the United States and a Second Lieutenant in the United States Air Force, who, on the day before, May 5, 1953, had boarded the Steamship DUKE OF YORK in [fol. 420] proper fashion at the Hook of Holland for a voyage to Harwich; that during the said voyage, and while the said Joseph D. Baca was traveling as a passenger, the steamship DUKE OF YORK was in collision with the USNS HAITI VICTORY during the early morning of May 6, 1953, as a result of which petitioner suffered personal injuries and loss of his personal effects.

Fifth: The foregoing collision and resulting losses were not caused or contributed to in anywise by petitioner, Joseph D. Baca, but the said collision was caused or contributed to by the fault and negligence of the steamship DUKE OF YORK and British Transport Commission's servants and employees in charge of her navigation in the following particulars, among others, to be shown at the trial of this cause:

1. Respondent's servants and employees who were in charge of her navigation were not attentive to their duties and were not maintaining a proper and alert lookout.

2. She was being navigated at a rate of speed which was dangerous, excessive and improper in view of the existing conditions.

3. She was proceeding through a mist or conditions of reduced visibility without the sounding of fog signals.

4. The steamship DUKE OF YORK was not maintained in a safe and seaworthy condition.

5. She was proceeding through a condition of reduced visibility without using the radar with which she was equipped.

6. She was not being navigated in accordance with the accepted rules of navigation.

7. She did not seasonably stop and reverse her engines.

Sixth: By reason of the foregoing collision, petitioner has been caused to suffer damages in the amount of Twenty-five Thousand Dollars ($25,000.00), no part of which has been paid.

Seventh: All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, petitioner prays that process in due form issue against the British Transport Commission, citing it to appear and answer all and singular the matters and things set forth in this petition; and that if the said British [fol. 421] Transport Commission cannot be found in this district, its goods and chattels, or any goods and chattels of the British Government within this district may be attached, to the amount sued for in the impleading petition herein, and that this Court will decree the payment by said British Transport Commission to the petitioner herein, of the sum of Twenty-five Thousand Dollars ($25,000.00), together with interest and costs; and that the petitioner may have such other and further relief as may be just.

Joseph D. Baca, By L. T. Seawell, Jr., Of Proctors.

Duly sworn to by L. T. Seawell, Jr. Jurat omitted in printing.

[fol. 422] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

IMPLEADING PETITION OF L. T. SEAWELL, JR., UNDER ADMIRALTY RULE NO. 56—Filed May 3, 1954

The petition of L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodicka, Deceased, against the British Transport Commission, filed pursuant to Rule No. 56 of the Rules of Practice in admiralty and maritime causes, alleges on information and belief as follows:

First: Petitioner duly qualified as Administrator of the Estate of Ferdinand Vodicka, Deceased, on the 10th day of September, 1953 in the Circuit Court of the City of Norfolk, a court of competent jurisdiction, and as such is the legal administrator of the estate of the said decedent.

Second: British Transport Commission is and was at all times hereinafter mentioned, an agency of the British Government, and was at all times hereinafter mentioned, owner and operator of the steamship DUKE OF YORK, and as a claimant-respondent in the original proceeding herein, is subject to the jurisdiction of this Honorable Court.

Third: On or about the 10th day of June, 1953, a petition for exoneration from or limitation of liability was filed by the United States of America, as owner of the USNS HAITI VICTORY, which said petition, among other things, alleged that on May 6, 1953 while on a voyage from Argentia to Bremerhaven, Germany, the USNS HAITI VICTORY was in collision with the steamship DUKE OF YORK, which said collision, the petition further alleged, was caused by the fault and neglect of the steamship DUKE OF YORK and the persons in charge of her.

[fol. 423] Fourth: On September 29, 1953, petitioner filed his claim and answer in the said limitation proceeding alleging, among other things, that the said collision was caused or contributed to by the fault or neglect on the part of the USNS HAITI VICTORY or those in charge of her.

Fifth: Petitioner further alleges that on May 6, 1953 his

decedent, Ferdinand Vodicka was an Austrian National, who, on the day before, May 5, 1953, had boarded the steamship DUKE OF YORK in proper fashion at the Hook of Holland for a voyage to Harwich; that during the said voyage, and while the said Ferdinand Vodicka was traveling as a passenger, the steamship DUKE OF YORK was in collision with the USNS HAITI VICTORY during the early morning of May 6, 1953, as a result of which petitioner's decedent lost his life and all of his personal effects were destroyed.

Sixth: The foregoing collision and resulting losses were not caused or contributed to in anywise by respondent's decedent, Ferdinand Vodicka, but the said collision was caused or contributed to by the fault and negligence of the steamship DUKE OF YORK and British Transport Commission's servants and employees in charge of her navigation in the following particulars, among others, to be shown at the trial of this cause:

1. Respondent's servants and employees who were in charge of her navigation were not attentive to their duties and were not maintaining a proper and alert lookout.

2. She was being navigated at a rate of speed which was dangerous, excessive and improper in view of the existing conditions.

3. She was proceeding through a mist or conditions of reduced visibility without the sounding of fog signals.

4. The steamship DUKE OF YORK was not maintained in a safe and seaworthy condition.

5. She was proceeding through a condition of reduced visibility without using the radar with which she was equipped.

6. She was not being navigated in accordance with the accepted rules of navigation.

7. She did not seasonably stop and reverse her engines.

[fols. 424-429] Seventh: By reason of the foregoing collision, the estate of Ferdinand Vodicka has been caused to suffer damages in the amount of One Hundred Fifty-one

Thousand Five Hundred Dollars ($151,500.00), no part of which has been paid.

Eighth: All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore the petitioner prays that process in due form issue against the British Transport Commission, citing it to appear and answer all and singular the matters and things set forth in this petition; and that if the said British Transport Commission cannot be found in this district, its goods and chattels, or any goods and chattels of the British Government within this District may be attached, to the amount sued for in the impleading petition herein, and that this Court will decree the payment by said British Transport Commission to the petitioner herein, of the sum of One Hundred Fifty-one Thousand Five Hundred Dollars ($151,500.00), together with interest and costs; and that the petitioner may have such other and further relief as may be just.

L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodicka, Deceased.

Hughes, Little & Seawell, 936 Wainwright Bldg., Norfolk, Virginia, Proctor for Impleading Petitioner.

Duly sworn to by L. T. Seawell, Jr. Jurat omitted in printing.

[fol. 430] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

MOTION TO IMPLEAD THE BRITISH TRANSPORT COMMISSION—Filed May 5, 1954

Now comes the undersigned, Oliver Gorm Clausen, and moves this Court to enter an order herein impleading the

British Transport Commission, as owner of the steamship DUKE OF YORK, as a party to this cause.

Oliver Gorm Clausen, By C. Lydon Harrell, Jr., His Counsel.

C. Lydon Harrell, Jr., 423 Kresge Building, Norfolk, Virginia.

NOTICE

To: Baird, White & Lanning, Bank of Commerce Building, Norfolk, Va.

Hughes, Little & Seawell, Wainwright Building, Norfolk, Virginia.

Vandeventer, Black and Meredith, Citizens Bank Building, Norfolk, Virginia.

John W. Oast, Jr., Citizens Bank Building, Norfolk, Virginia.

Jett, Sykes, & Howell, Citizens Bank Building, Norfolk, Virginia.

John M. Hollis, Asst. U. S. Atty., Post Office Building, Norfolk, Virginia.

Earl W. White, Dean Building, Norfolk, Virginia.

John P. Parrish, 111 South Fairfax St., Alexandria, Va.

Please, take notice that on June 1, 1954, at 10:00 o'clock A. M., or as thereafter as I may be heard, I will pray to the Court that the above motion be brought on for hearing.

Oliver Gorm Clausen, By C. Lydon Harrell, Jr., His Counsel.

Certificate of Service (omitted in printing).

[fol. 431] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

REQUEST FOR ADMISSION DIRECTED TO CLAIMANT BRITISH TRANSPORT COMMISSION—Filed May 13, 1954

To: Messrs. Baird, White & Lanning, National Bank of Commerce Building, Norfolk, Virginia; Edwin Longcope, Esq., Messrs. McNutt & Nash, 84 William Street, New York 38, New York, Proctors for claimant, British Transport Commission.

1. Please take notice that the petitioner, United States of America, hereby requests the claimant, British Transport Commission, pursuant to Rule 32(b) of the Rules of Practice in Admiralty and Maritime Cases, to admit within ten days after service of this request, for the purpose of the above-entitled action only, and subject to all pertinent objections to admissibility which may be interposed at the trial, the genuineness of the following documents, copies of which are annexed hereto:

(a) Sections 1, 2 and 3 of the British Transport Commission Act of 1947, 10 and 11 Geo. VI, ch. 49.

(b) Scheme of delegation of functions by the British Transport Commission to the Railway Executive, approved by the Minister of Transport, 25 November, 1947, as published in Butterworth's Annotated Legislation Service.

[fol. 431a] (c) Letter dated April 28, 1954 from the Chief, Admiralty and Shipping Section, Department of Justice, to the Editor of Lloyd's List and Shipping Gazette.

(d) Reply dated May 6, 1954 from the Editor, Lloyd's List and Shipping Gazette, to the Chief, Admiralty and Shipping Section, Department of Justice.

2. Your petitioner further requests plaintiff, pursuant to said Rule 32(b), to admit the truth of the statement made

in the letter from the Editor of Lloyd's List and Shipping Gazette dated May 6, 1954.

L. S. Parsons, Jr., United States Attorney.

Dated: Norfolk, Virginia, May 13, 1954.

Certificate of service (omitted in printing).

[fols. 432-433] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

REQUEST FOR ADMISSION DIRECTED TO CLAIMANT BRITISH TRANSPORT COMMISSION—Filed May 18, 1954

To: Messrs. Baird, White & Lanning, National Bank of Commerce Building, Norfolk, Virginia; Edwin Longcope, Esq., Messrs. McNutt & Nash, 84 William Street, New York 38, New York, Proctors for claimant, British Transport Commission.

Please take notice that the petitioner, United States of America, hereby requests the claimant, British Transport Commission, pursuant to Rule 32(b) of the Rules of Practice in Admiralty and Maritime Cases, to admit within ten days after service of this request, for the purposes of the above-entitled action only, and subject to all pertinent objections to admissibility which may be interposed at the trial, the genuineness of the following document, a copy of which is annexed hereto:

Statutory Instruments 1953 No. 1291, issued by the Ministry of Transport 19th August, 1953, entitled The British Transport Commission (Executives) Order, 1953.

L. S. Parsons, Jr., United States Attorney.

Dated: Norfolk, Virginia, May 18, 1954.

Certificate of service (omitted in printing).

[fol. 434] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

STATEMENT OF CLAIMANT, BRITISH TRANSPORT COMMISSION, IN RESPONSE TO PETITIONER'S REQUESTS FOR ADMISSION UNDER ADMIRALTY RULE 32B, DATED MAY 13, 1954 AND MAY 18, 1954—FILED MAY 24, 1954

Claimant, British Transport Commission, by Edwin Longcope, its proctor, makes the following statement in response to Petitioner's request for admission pursuant to Rule 32B.

1. With respect to items 1 (a) and (b) in the request dated May 13, 1954, this claimant admits the same.

2. With respect to items 1 (c) and (d) of the request dated May 13, 1954, this claimant can neither admit nor deny the genuineness of these letters therein mentioned, inasmuch as it did not write the same. For the same reason claimant avers that it can not be compelled to admit the genuineness of the same and that their genuineness, if material, is subject to the normal mode of proof.

3. With respect to the truth of the statement made in the letter from the editor of Lloyd's List & Shipping Gazette dated May 6, 1954, there again this claimant is unable to either admit or deny the accuracy of such information, but considers that the said letter is not relevant to petitioner's motion to discovery inasmuch as whatever inquiry may have been conducted by the British Ministry of Transport a report thereof is not within the possession, custody or control of this claimant and hence not subject to discovery. This claimant is not a governmental agency and has no connection with the said Ministry. Any request for report of any inquiry conducted by the said Ministry should be addressed to it and not to the claimant.

[fols. 435-436] 4. This claimant admits the genuineness of the document referred to in Petitioner's request for admission dated May 18, 1954.

5. This statement is made by the undersigned as proctor for the claimant British Transport Commission, inasmuch as the latter has no officer or agent within this country.

Edwin Longcope, Baird, White & Lanning, Proctors,
By Guilford D. Ware.

Duly sworn to by Edwin Longcope. Jurat omitted in printing.

Certificate of service (omitted in printing).

[fol. 437] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

SUPPPLEMENTAL AFFIDAVIT IN OPPOSITION TO PETITIONER'S MOTION FOR DISCOVERY UNDER SUPREME COURT ADMIRALTY RULE 32—Filed May 26, 1954

STATE OF NEW YORK,
County of New York, ss.:

EDWIN LONGCOPE, being duly sworn, deposes and says:

That he is Proctor for British Transport Commission, a claimant herein, as owner of the cross-channel passenger steamer DUKE OF YORK, with respect to damages sustained by the DUKE OF YORK, with respect to damages sustained by the DUKE OF YORK as the result of a collision with the Naval Transport HAITI VICTORY, a United States public vessel, on May 6, 1953; that the following statements are made upon information received from the British Transport Commission and other sources; and that the statements made are, to the best of his knowledge, information and belief, correct.

[fol. 438] 1. The petitioner avers in its answer to the claim of the British Transport Commission that at the time

of this collision and to date there existed between the Government of the United Kingdom of Great Britain and Northern Ireland and the petitioner an Executive Agreement signed at London on December 4, 1942, pursuant to which "any and all claims on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland or any governmental agency owning and operating the DUKE OF YORK were waived as against the United States, and pursuant to Article Second of that Agreement the claim is to be asserted in limitation proceedings for the purpose of marshalling but not for payment." Petitioner avers, further, that although called upon to do so, "the public authority owning and operating the DUKE OF YORK has failed and refused and has contended and does still contend that its operations and its vessels are outside the scope of the Agreement."

The petitioner, in its answer, prays "that evidence be taken on the application of said Executive Agreement to the facts of the case and the said Agreement applied."

In the light of this contention by the petitioner in its answer, it is quite evident that petitioner seeks by praying for discovery of Items 12 and 13, to secure a determination by this Court in an indirect way that this so-called "Knock-for-Knock Agreement" is applicable to this situation. Should discovery be granted of these items, which affiant understands do not exist in fact, then no doubt the petitioner will use such discovery order, which would necessarily entail a finding that the British Transport Commission is an arm of the British Government, as a ruling, in effect, that the Knock-for-Knock Agreement is applicable.

[fol. 439] This Knock-for-Knock Agreement may be found printed in 1943 A. M. C., at page 133. The provisions which this claimant deems material are set forth in its brief in partial opposition to the petitioner's motion.

It is to be noted that pursuant thereto each contracting Government *agrees* to waive, *inter alia*, all claims arising out of or in connection with negligent navigation in respect of any vessing (including naval vessel) owned by such other Government where such other Government represents that such claim if made would ultimately be borne by such other Government. It is not self-operative to effect a waiver merely because one of the contracting Governments invokes

it. It requires the agreement of *both* Governments, acting through their interested departments or agencies, that the particular claim properly falls within the Agreement. If they so agree, then the waiver is effected by the execution of a Waiver Certificate. The application of or interpretation of this Agreement was never intended to be a matter for judicial interpretation or review. These are matters solely for administrative settlement.

This was recognized by the Department of Justice when a letter dated July 21, 1953, was addressed by them to the British Treasury Solicitor, asking him to intervene in these proceedings on the ground that the British Government might be involved. A photostatic copy of a copy of the reply thereto by the British Treasury Solicitor is attached hereto, marked "Exhibit A".

It will be noted that the British Treasury Solicitor rejected this suggestion, with the statement:

> "I should like to stress that the British Transport Commission are certainly not a Government Department and the DUKE OF YORK is not what is known in America as a public ship and no question of [fol. 440] waiver arises."

This ends the matter.

2. The affidavit annexed to the petitioner's motion avers that the material facts necessary to the proper disposition of the case "which your affiant has not been able to obtain by any public investigation of the kind which would normally occur "are with respect to

> (a). The speed at which the DUKE OF YORK was proceeding in the fog.
>
> (b). Whether the DUKE OF YORK had a bow lookout.
>
> (c). Whether the DUKE OF YORK was proceeding in a fog relying upon a defective radar."

This affidavit avers further that the "basic information sought is necessary to the preparation of the proofs by the HAITI VICTORY; cannot be obtained from any other source; must be obtained before the testimony can be adequately taken abroad; cannot be obtained abroad unless an order of discovery has been entered by this Court; and may be dispositive of the case."

This affiant avers that all of this information which may not be furnished to the petitioner by this claimant's consent to the discovery motion with respect to Items 1, 2 and 3, could have been obtained by the petitioner had it availed itself of the opportunity afforded its representatives at the Adjourned Coroner's Inquest held at Harwich, England, on January 6, 1954.

The Notes of Proceeding, a copy of which is in affiant's possession and will be furnished to the Court if it so de-
[fol. 441] sires, shows that among those present were Commander Charles Timblin (United States Navy) appearing as an observer for the United States Navy, and Mr. Walker, appearing as an observer on behalf of the United States Army.

In response to a request by the Coroner to have the names of any gentlemen representing any of the interested parties these gentlemen replied as follows:

> "Commander Timblin: I am really not representing anyone; I am appearing as an observer for the United States Navy. My name is Charles Timblin.
>
> Mr. Walker: My name is Walker and I am an interested observer on behalf of the personal representatives of May Margaret Ansdell."

Among the witnesses called were Roland Vincent Adams, Master of the DUKE OF YORK, and William Frank Bramhill, Second Officer of the DUKE OF YORK, who was in charge of the deck watch at the time of this collision.

At the conclusion of Captain Adams' testimony, the Coroner asked both Commander Timblin and Mr. Walker if they had any questions. Both replied: "No, Sir."

Mr. Bramhill was then called and examined. He was followed by George Henry Wilding, the Ship's Purser on the DUKE OF YORK. That Commander Timblin and Mr. Walker recognized that they were afforded an opportunity to examine the witnesses appears from the following colloquy that took place when the Coroner asked if there were any questions, at the conclusion of Mr. Wilding's examination:

> [fol. 442] "Commander Timblin: If I may I should like to make my position clear since I am being af-

forded an opportunity to question these people. I am just attending as an observer. There are questions which I should very much like to have asked the last two witnesses but I am not going to; I am just observing for the Navy.

The Coroner: I quite understand but if something does occur to you you have only to ask me.

Commander Timblin: Something has occurred to me very much but I do not think I should ask questions since I am just an observer.

The Coroner: I will not include you in the rota of people to ask questions.

Commander Timblin: I would appreciate it if you did not."

Having had the opportunity to examine the Master and the Second Officer at the Adjourned Coroner's Inquest, but having failed to avail itself of that opportunity, affiant submits that petitioner can show no good cause for the discovery of Item 14, and/or of Items 12 and 13, even if existing in fact.

This is particularly true in view of the fact that the Coroner announced at this adjourned inquest that the reason for the adjournment was to take advantage of the findings of the public hearing, which is usually held, thus saving the time of a lot of busy people, but that he had been notified that the decision had been reached "not to hold an Inquiry at all".

Edwin Longcope.

Subscribed and Sworn to before me this 24 day of May, 1954. Lucy C. Paganelli, Notary Public.

[fols. 443-566] EXHIBIT "A" TO SUPPLEMENTAL AFFIDAVIT

Copy

Storey's Gate, St. James's Park, London, S. W. 1
The Treasury Solicitor A. H. K. Your ref:

WEB:TFMcG 61-18511

28th July, 1953.

Air Mail

HAITI VICTORY—DUKE OF YORK
Collision May 6th, 1953

Dear Sir,

I duly received your letter of the 21st July and the enclosures.

I understand that you wish me to intervene in the limitation proceedings on the ground that the British Government may be involved. I regret, however, that I cannot possibly do this because I have no instructions that any Government Department are interested in the case.

Presumably, the British Transport Commission will enter an Appearance in the limitation proceedings should they wish to do so.

I should like to stress that the British Transport Commission are certainly not a Government Department and the DUKE OF YORK is not what is known in America as a public ship and no question of waiver arises.

The British Transport Commission is the Public Authority constituted in accordance with our Transport Act, 1947. Any surpluses of the Commission are not payable to Her Majesty's Government, nor does her Majesty's Government have to meet any deficiencies which the Commission may incur nor is Her Majesty's Government responsible for the debts of the Commission, save in so far as the Commission's stock or temporary borrowings may be guaranteed by the Treasury in accordance with the relevant provisions (primarily Section 90) of the Transportation Act, 1947.

The status of the British Transport Commission was discussed in the case of Tamlin v. Hannaford 1950 1 King's Bench Reports page 18. The case came before our Court

of Appeal and the following is an extract from the Judgment:

> "In the eye of the law the Corporation (the British Transport Commission) is its own master and is answerable as fully as any other person or Corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not Civil Servants and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes but it is not a Government Department nor do its powers fall within the province of government."

The only other thing I might add is that litigation and claims proceed between the British Transport Commission and the Government Departments whom I represent, just as they do between private individuals and the Departments.

In the circumstances I think you will appreciate I cannot intervene in this matter.

Yours faithfully, /s/ A. H. Kent, Assistant Treasury Solicitor.

The Attorney General, United States, Dept. of Justice, Washington 25, D. C., U. S. A.

[fol. 567] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

[Title omitted]

MEMORANDUM ON PETITIONER'S MOTION FOR DISCOVERY UNDER ADMIRALTY RULE 32—July 2, 1954

On the argument of this motion it appeared that the only items remaining in controversy were the statements made by certain crew members and other employees of the British Transport Commission at a preliminary inquiry con-

ducted by the British Ministry of Transport or one of its subordinate bodies. At bar the United States conceded that it would be satisfied with the production of the statements of those persons, without disclosure of any other part of the inquiry. Counsel for the British Transport Commission stated that his client had endeavored to obtain the statements, that the Ministry was willing to release them upon, but only upon, the direction of the declarants, and that the latter had declined to give their consent to the release. However, he assured the Court that these persons would be tendered for examination at the trial.

[fol. 568] The Court is of the opinion that, pursuant to Admiralty Rule 32, the Transport Commission should now be directed to produce the employees' statements, even though they be in the possession of the Ministry of Transport. Arguendo we may concede, as its counsel argues, that the Commission is not the Crown—it cannot bind the Crown, it has not the privileges and immunities of the Crown, its property is not Crown property, and, in short, it is not a political arm of that Government. But we are not concerned with the legal status of the Commission or of its property, or at this stage with the British-American Knock-for-Knock agreement mentioned by the Commission's proctor. The bald fact is that the British government—the Ministry of Transport—operates the Harwich ferry and for this purpose adopts the immediate agency of the Commission. Accordingly it must take the burdens of that operation with its benefits. When it thus empowers the Commission to perform the operation, the Ministry cannot complain if the Commission is held to the production of material pertaining to a particular incident of such operation, which the Commission is here litigating, though the data be in the possession of the Ministry and not in the custody of the Commission. To put it differently, the Commission cannot be excused from obedience to a discovery order, relating to its agency-operation, just because its principal refuses to permit it to do so. Obviously the order cannot be questioned as one directed at a suit-immune sovereign power, for the order does not run to the British government.

[fol. 569] Moreover, good cause has been shown for the

order. The requested statements are most valuable both as informative of the details of the accident and as checks upon the testimony of the declarants. These witnesses are not readily available in advance to the United States. They are British subjects, resident in England, and have an allegiance to the Commission as past or present employees —circumstances scarcely suggesting either easy access to, or free expression by, the witnesses at this time.

Let an appropriate order be presented.

Albert V. Bryan, United States District Judge.

Alexandria, Virginia, July 2nd, 1954.

[fol. 570] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

[Title omitted]

MEMORANDUM ON RIGHT OF CERTAIN CLAIMANTS TO IMPLEAD A CO-CLAIMANT UNDER RULE 56—July 2, 1954

Following the collision of the USNS HAITI VICTORY with the SS DUKE OF YORK in the North Sea, the United States filed here a petition for exoneration from or limitation of liability. British Transport Commission, the owner of the DUKE OF YORK, has filed a claim for the collision damage to that vessel. Other claimants, including the personal representatives of passengers killed in the collision, seek to implead, under Admiralty Rule 56, the British Transport Commission as an additional party defendant to their claims against the United States, laying contributive negligence to the DUKE OF YORK. The Commission excepts to the impleader.

The impleading petitions cannot be allowed. While the limitation of liability statute, as executed by Admiralty [fols. 571-574] Rules 51-54, has been authoritatively interpreted as offering a forum for the complete adjudication and recovery of all claims, the reference is to claims and remedies against the petitioner only. Hartford Accident Co. v. Sou. Pacific (1926) 273 U. S. 207; Just v. Chambers

(1941) 312 U. S. 383, 386. No case has permitted the impleading of one co-claimant by another. In The Clio-The Springhill, 1948 A. M. C. 75-77, Judge Knox permitted the original petitioner to implead a third-party defendant, but the latter was a claimant in the concourse, and the impleader was simply a counter or otherwise defensive move of the petitioner in respect to that claim.

To permit one claimant to prosecute another claimant in the limitation litigation would be unfair. The latter has intervened under compulsion, the court enjoining his resort to any other tribunal. Therefore, his responsibility should not be enlarged beyond that incident to his claim. Obedience to the injunction should not expose him to an attack to which, in regular course, he would be subject only in the jurisdiction of his residence or other place of voluntary entrance. Department of Highway v. Jahncke Service (1949) 5 Cir. 174 F. 2d 894 sustains this position. Although the impleaded party was not already in the cause, the same principle there enforced governs here.

Denial of the instant motion will be based upon the ground that a limitation proceeding does not provide a forum for the adjudication of liability of co-claimants to each other.

Albert V. Bryan, United States District Judge.

Alexandria, Virginia, July 2nd, 1954.

[fol. 575] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

[Title omitted]

PRE-TRIAL ORDER—July 12, 1954

The above case having come on for a hearing at Newport News, Virginia, on June 1, 1954, it is hereby

Ordered:

(1) That the trial of the liabilities of the case be set to commence at the United States Courthouse at Newport News, Virginia, on September 20, 1954, at 10:00 o'clock,

Eastern Standard Time, and that all persons desiring to contest the liabilities of the two vessels be summoned to appear at that hearing if they wish to be heard on that issue:

(2) That the hearing commencing on September 20 will be restricted to the issues of the asserted liabilities of the two vessels, DUKE OF YORK and HAITI VICTORY, for the collision; the asserted right of the owners of the HAITI VICTORY to the benefits of the limitation of liability statutes; and the valuation of the HAITI VICTORY for purposes of limitation of liability; and the said hearing will in no way involve proof of the claims for personal injury, death, or for loss of baggage, all of which are to await subsequent hearing after the liabilities and the limitation issues have been decided.

(3) That copies of this order will be circulated by the petitioner, together with the list of claims required by Admiralty Rule 52, to all persons who have filed claims in this proceeding; and that the attention of claimants who have not employed counsel resident in the Eastern District of Virginia, or who have not provided the local address of some person on whom notice may be served, is directed to the provisions of Rule 9(5) of this Court's Rules, which is set forth below.

Albert V. Bryan, U. S. District Judge.

Dated: July 12th, 1954, U. S. District Court for the Eastern District of Virginia.

[fol. 576] E. D. Va. R. 9- "5. A practitioner from another State or the District of Columbia may also be permitted to appear in and conduct specific cases in association with a duly qualified member of the bar of this court, if the rules of the Federal courts of the District in which he maintains an office extend a similar privilege to attorneys of this district. But, except where a party conducts his own case, no pleading or notice required to be signed by counsel shall be accepted by the clerk unless signed by an attorney who shall have been admitted to practice in this court, who shall be a resident of and maintain an office in this State, who shall have entered his appearance

of record in the case, with the address in the State where notice can be served upon him, and who shall have such authority that the court can deal with him alone in all matters connected with the case. This appearance shall not be withdrawn without leave of the court. Service of notice or other proceedings on him shall be equivalent to service on the parties for whom he appeared. Where a party is conducting his own case he shall file with his pleading a memorandum of one address within the district where notice can be served."

No objection as to form:

Baird, White & Lanning by —— —— Baird, National Bank of Commerce Building, Norfolk, Virginia, and McNutt & Nash, 84 William Street, New York 38, New York, Proctors for the claimant, British Transport Commission.

Roger E. Brooks, 923 - 20th Street, N. W., Washington, D. C., Proctor for claimants.

C. Lydon Harrell, Jr., Dickson Building, Norfolk, Virginia, Proctor for claimants.

Hughes, Little & Seawell, 936 Wainwright Building, Norfolk, Virginia, Proctors for claimants.

R. Arthur Jett, Jett, Sykes & Howell, 701 Citizens Bank Building, Norfolk 10, Virginia, Proctors for claimants.

John W. Oast, Jr. and Messrs. Dow & Symmers, Citizens Bank Building, Norfolk 10, Virginia, Proctors for claimants.

John P. Parrish, 111 South Fairfax, Alexandria, Virginia, Proctor for claimants.

[fols. 557-1356] Vandeventer, Black & Meredith, Citizens Bank Building, Norfolk 10, Virginia, Proctors for claimants.

Earl W. White, Dean Building, Norfolk, Virginia, Proctors for claimants.

[fol. 1357] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

[Title omitted]

ORDER REOPENING MEMORANDUM OF COURT, ETC.—November 2, 1954

Petitioner having heretofore filed herein its motion for discovery from the claimant British Transport Commission of, inter alia, certain statements or depositions given to the Ministry of Transport of the Government of the United Kingdom of Great Britian and Northern Ireland on or about May 13, 1953 by the following named witnesses on the DUKE OF YORK:

Rowland Vincent Adams
Frank Brown Allen
William Frank Bramhill
Norman Wyles Roberts
Frederick John Bourne
Malcolm Alistair Ottley
Herbert Ernest Saunders;

and hearing having been had before this Court on June 1, 1954 upon the aforesaid motion of petitioner, and the Court having thereafter, on July 2, 1954, filed herein its memorandum holding that "the British Government—the Ministry of Transport—operates the Harwich Ferry and for this purpose adopts the immediate agency of the [fol. 1358] Commission", and entered its order that the claimant, British Transport Commission, be, therefore, required to produce and make available to petitioner for inspection and copying the statements or depositions given to the Ministry of Transport by the witnesses aforenamed, and prior to the trial of this cause copies of the said statements or depositions having been voluntarily made available by the British Government to petitioner herein and to all other parties:

Proctors for the claimant thereupon advised the Court that the question of whether the British Transport Com-

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mission was an agency of the British Government may later become a critical issue in this cause or in other proceedings involving the claim of the said Commission asserted in this suit, and because the question could then be presented more fully than was possible on said discovery proceedings, they desired to have any decision thereof deferred until that time, and to this end the said proctors moved the Court to reopen its decision of said question and rehear the said issue.

Upon consideration whereof, it appearing that the production of said papers as aforesaid has satisfied the aim and purpose of said order and the Court being willing to hear further argument and exposition of said question, it is

Ordered that the aforesaid memorandum of this Court, [fols. 1359-1404] filed herein on July 12, 1954, insofar as it held that claimant British Transport Commission was the agent of the British Government and its Ministry of Transport in the operation of the DUKE OF YORK, is hereby reopened, the issue to be reheard as and when it may again arise.

Albert V. Bryon, United States District Judge.

Alexandria, Virginia. November 2nd, 1954.

[fol. 1405] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

[Title omitted]

AMENDED IMPLEADING PETITION ON BEHALF OF JULIET ROBESON CHAMBERLAIN UNDER SUPREME COURT ADMIRALTY RULE NO. 56—Filed March 31, 1955

The amended impleading petition of Juliet Robeson Chamberlain against the British Transport Commission filed pursuant to United States Supreme Court Admiralty Rule No. 56 of the Rules of Practice in Admiralty and

Maritime Cases, alleges, on information and belief, as follows:

First: This petitioner herein and hereby adopts all allegations of her impleading petition under Supreme Court Admiralty Rule No. 56 heretofore filed herein on or about May 1, 1954, to the same extent as if the same were again herein repeated in words and figures, with the exception of paragraph numbered "Seventh" of her said impleading petition under Supreme Court Admiralty Rule No. 56; which is hereby amended to read:

"Seventh: By reason of the foregoing collision petitioner has been caused to suffer damages in the sum of Fifty Thousand ($50,000.00) Dollars for injuries, loss of time, medical and other expenses, and the further sum of Five Hundred ($500.00) Dollars for loss of baggage and personal effects, no part of which has been paid, although duly demanded."

Juliet Robeson Chamberlain, By: R. Arthur Jett, of Proctors for Petitioner.

Jett, Sykes & Howell, Proctors for Juliet Robeson Chamberlain, 701 Citizens Bank Building, Norfolk 10, Virginia.

[fols. 1406-1410] *Duly sworn to by R. Arthur Jett. Jurat omitted in printing.*

[fol. 1411] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

IN THE MATTER OF THE PETITION OF THE UNITED STATES OF AMERICA AS OWNER OF THE USNS HAITI VICTORY, FOR EXONERATION FROM OR LIMITATION OF LIABILITY

MEMORANDUM BY THE COURT—May 5, 1955

Just before dawn in the North Sea on May 6, 1953, the USNS HAITI VICTORY, headed for Bremerhaven, and the westbound S. S. DUKE OF YORK, an overnight ferry between

the Hook of Holland and Harwich, England, collided. The DUKE OF YORK had just emerged from a fog; the HAITI VICTORY was running in clear weather. Minor damage was suffered by the HAITI VICTORY, but her stem so deeply knifed into the port side of the DUKE OF YORK, just forward of her bridge, that the entire bow of the latter fell off and sank. Several of her 437 passengers were killed, others injured, and a large number lost their personal baggage. As owner of the HAITI VICTORY, the United States of America has filed a petition for exoneration from or limitation of liability. The question is whether either or both vessels failed to observe the care and caution enjoined upon mariners, by seamanship and statute, for the prevention of collisions at sea.

Asking $1,500,000 for her damage, the British Transport Commission, operating the DUKE OF YORK in connection with the British railway system, has led in the effort of [fol. 1412] the claimants to lay responsibility for the accident to the HAITI VICTORY. Petitioner's right to limitation, as well as the limitation fund of $1,039,959.52, has been established without contest. Certain claimants sought, through impleading petitions, to assert and try in this proceeding the liability of the British Transport Commission to them; the attempts were rejected and the immunity of the Commission thereto in the present forum was sustained. Ascertainment of the quantum of damages has been deferred in each instance to the determination of liability.

The DUKE OF YORK, a twin screw steam turbine oil burner, 339 feet in length, left the Hook of Holland bound for Harwich a few minutes after midnight May 5, 1953 (early morning of May 6). She had a maximum speed of 18-20 knots and the crossing was normally a matter of five hours. Her lane was slightly south of due west—W.1/4 S., 267° magnetic—and took her about a mile south of Galloper Lightship, located off the English coast some distance north of the Thames' mouth. The Hook and Harwich are nearly on the same parallel, a little below the 52nd N. The DUKE was showing all required navigation lights—two steaming lights forward, masthead and mainmast, a stern light, and red and green side running lights. Her equipment included radar, but the instrument failed before the ship was twenty

minutes out. In addition to her regular officer complement, she carried a Dutch pilot all the way across.

The HAITI VICTORY is a single-screw propeller, of the Victory ship type, 439 feet in length and equipped with radar. She took on a licensed British pilot at Dover just after 0117 British Summer Time, which was one hour ahead of Greenwich Mean Time and is the time of the [fol. 1413] references herein. Up to Galloper Lightship her course was generally 022° at first, and then 024°, gyro. Passing on her port hand the South and East Goodwin Lightships enroute, she came abeam of Galloper at about 0414 BST. After an alteration of her course to 050° gyro, to go under the stern of a crossing vessel, when 1½ miles to the east of Galloper, the HAITI VICTORY settled on a firm course of 036° gyro. She was maintaining her maximum speed, 17-18 knots, and was showing all requisite lights.

The HAITI VICTORY's first notice of the DUKE's presence was the latter's fog whistle just after 0414 hours. It was caught by the HAITI VICTORY's forward lookout, and immediately reported to the bridge, as being off the starboard bow. Her pilot had heard it too. Instantly he passed to the starboard door of the wheelhouse, scanned the darkness from bow to beam, saw nothing and went directly to the radar. It disclosed a target on his starboard bow. Going again to the starboard wing of the bridge and again seeing nothing, he at once stopped his engines—0415 hours. Within a moment the red light of the DUKE appeared on his starboard bow but ½ mile off; thereupon the HAITI's rudder was put Hard Right, her engines Full Astern, and her whistle given a short blast. At 0416 the ships were together.

Aboard the DUKE, the captain heard a whistle four or five points on her port bow—the blast of the HAITI as she went Right Rudder and Full Astern. About the same time his forecastle-head lookout shouted his observation of the HAITI's masthead light, as well as her green light, ¼ mile away, about 6 points on the port bow. While taking a "fix". [fol. 1414] from the Decca dials in the wheelhouse, the DUKE's second mate heard the lookout's call, and running out on the port wing picked out the HAITI's green light with his binoculars, his radar being inoperable. At once the master put the DUKE's engines on Slow, manually

sounded a prolonged blast on her whistle, and followed it with Full Astern and 3 short blasts. Collision ensued.

The collision was two miles east of Galloper. The prow of the HAITI VICTORY penetrated the port bow of the DUKE OF YORK on the foreside of her bridge. The HAITI VICTORY puts the time at 0416, the YORK at 0418 hours. No fault is found in the engine or wheel movements of either vessel after they become aware of each other. Agony of collision was upon them and avoidance was then impossible. Existence or absence of earlier fault becomes a question of whether for the weather then prevailing the conduct of either vessel constituted negligence in navigation; therefore, the primary and crucial inquiry is what was the weather as known, or as it ought to have been known, to the two navigators.

A meteorological cold front was moving over the North Sea, from northeast to southwest, on the very early morning of the collision, May 6, 1953. It seemed to be pivoting on a point to the north of the east coast of England. By illustration, at midnight, GMT, along the English coast the weather was favorable, and was as favorable along the European coast as far north as the Hook of Holland; from midnight until 4 o'clock A. M. BST it moved southwardly 60 miles along the Dutch coast, but only 20 to 30 miles along the English shore. As a "weak" front it in- [fol. 1415] cluded only drizzle, overcast and fog with very poor visibility. At 4 o'clock BST it was still 60 miles northeast of Galloper, but twice as far down the European coast as on the opposite coast. From 4 o'clock until 7, it was almost stationary on the English side, leaving fair visibility there, but the night was dark. In and around Galloper the weather at 0300 hours was "cloudy with wet dew", meaning on Galloper's log legend that the moon or stars would be visible at times. Fog signals were not commenced by Galloper until 0445 (the collision was at 0416 or 0418) and not until 0600 was it overcast and misty at Galloper. "Misty . . . is not quite as thick as [fog] but enough to cause objects to be indistinct and to require the fog signal to be sounded." The frequency of the fog and the low visibility increased from Galloper toward the Dutch coast.

From the time the DUKE left the gas buoy, the first sea

point, off the Hook of Holland, she met fog. As early as 12:45 A. M., less than an hour after leaving the docking pier, her captain was called to the bridge on account of the fog. At Noord Hinder Lightship, off the Dutch coast and 9 miles south of the DUKE's track, the log records the weather as foggy from one A. M. to five. The DUKE was running through a "patchy" fog—"very thick at times" and then fairly clear intervals. She was piercing one fog bank after another. Fog signals from the vessel's steam whistle were sounded continually. From 3 A. M. on, the fog was "very thick". This is the testimony of the DUKE's crew. The fog pocket she transited immediately before the collision was apparently the westernmost in her course.

[fol. 1416] In such weather the speed of the DUKE OF YORK was too fast for good seamanship; it violated the "moderate speed" injunction in the fog rules of Article 16, International Rules, 33 USCA 145n. It was an overriding and major fault; collision was a foreseeable result. Enveloped repeatedly throughout her passage in a fog that severely cut visibility, and rendered her invisible, she nevertheless assumed and kept to her clear weather speed —she reached Galloper at her regularly scheduled hour. When on the bridge at 12:45 A. M., the captain reduced the engines to Half Speed, 12 knots, but within a few minutes he put them back on Full Speed, 18 knots, and returned to his cabin, evidently satisfied with the visibility. Never was visibility greater than 1 or 2 miles. From 0053 until 0325 hours her engines were at Full Speed Ahead. Twenty-four miles east of Galloper, 0325, visibility was shorter than a mile; by 0412, six minutes before the collision, it was less than half a mile; but during this period, save for a minute, her speed was 16 knots, Standby Full Ahead. At 0412 and up to the collision, visibility was ¼ mile, the captain, his mate and lookout have said, and even in this interval the speed was 12 knots, Half Ahead. Not until the HAITI VICTORY was sighted, the ships ¼ mile apart, and the collision a minute or two off, did the engines go to Slow, 6 knots.

Obviously, too, the DUKE was not conforming to the authoritative interpretation of Article 16—that speed in a fog shall not exceed a rate that would allow her, with the

assistance of her engines, to come to a standstill before she would collide with another vessel that she should see. The Laurence, 1893, 4 cir. 54 F. 542, 544; The Silver Palm, 1937, 9 cir. 94 F. 2d 754, 757; Griffin on Collision, p. 292 et seq.; The Fjell, 1949, E. D. Va. 257 F. 478, 480, opinion [fol. 1417] by Judge Waddill. Indeed, she could not stop in time to allow the bow watch to get below to warn his companions. That 12 knots in a fog of ¼ mile visibility is in fact an immoderate speed seems manifest; that it is so in law is well precedented. Griffin on Collisions, p. 301, footnote 1.

As to fault in the HAITI VICTORY, decision depends on whether she knew or ought to have known that she was running into or alongside a fog bank. If she had such knowledge, actual or attributable, and if the fog rules bind a vessel approaching or running alongside a fog, she was at fault; for she was proceeding at full speed, 17-18 knots, and was taking no fog precautions. But the Court finds that she was neither in a fog nor chargeable with notice of the nearby fog patch. It cannot be successfully argued that, with the DUKE so near, the HAITI VICTORY must necessarily have been aware of the fog enshrouding the DUKE. The evidence denies any such deduction. The fog cloaking the DUKE hid her as effectively as it hindered her; and all the while remained imperceptible to the outsider.

As the HAITI left Dover, visibility was excellent, so clear that the radar was soon switched off. Lights were distinct on both sides of the Channel, ahead and astern. One vessel was overtaken on the way, readily discernible. At 0400, Galloper was easily picked up one point on the port bow. Just before the HAITI came abeam of Galloper, still another vessel was seen, running from Goegree Lightship, on the Holland coast and a little south of the Hook, to Harwich. The HAITI VICTORY altered her course to 050 to give way to the crossing vessel, went around her stern, and [fol. 1418] resumed her plotted course on 036. The crossing vessel, as indicated, came from the east, the very direction from which the DUKE was coming. She was plainly seen when as much as 4 or 5 miles eastward. This was at 0414 hours—2 minutes before the collision. A trawler a mile and a half north of the DUKE, and on a

parallel course, showed no consciousness of any fog. As we have seen, even Galloper did not find it advisable to issue fog signals until 0445, and then it did so not for fog, only for "Cloudy Wet dew." Signs of fog were not seen by the HAITI VICTORY until after the DUKE revealed herself. They were not overlooked; they were not there.

To charge the HAITI VICTORY with knowledge of the proximity of fog, the DUKE called to the stand the mate of the S. S. AMERICAN, a ship following the HAITI VICTORY up the North Sea. Her course was 034° True. Departing Dover seventeen minutes after the HAITI VICTORY, the mate said he was able at 0425 to see, 8½ miles on his "port head", the Kentish Knock Light located on the English coast; he stated the visibility was 10 miles. His log contains no entry of bad weather between 0236 and 0441. His notation of fog at 0441 corresponds to Galloper's log of fog signals at 0445; but AMERICAN's record reveals that fog was only setting in at 0441, that not until then were her engines put on Standby, and only at 0450 was her speed reduced because of fog. He states he could not see Galloper until within ½ mile of it at 0506, but his log notes that the AMERICAN came abeam of Galloper at 0508 with 3 miles visibility. Hence, he gives no proof of fog perception on the English coast as early as 0416 or 0418—[fol. 1419] collision times. When 1½ miles passed Galloper, 0512, he saw the DUKE and the HAITI lying alongside each other fore and aft.

True, the HAITI VICTORY's master did not completely undress on turning in, staying ready for any call, including a fog alarm. He testified, too, of the frequency of fogs in the North Sea. But, all of this discloses precaution against fog, not suspicion of it. Of course, he knew that ships traversed the North Sea between the English and Dutch ports; but he had the right to assume that their presence would be announced through the signals, and would be accompanied by the seamanship, demanded by the laws of the sea. Admittedly, as to the westbound traffic he was the burdened vessel, they the privileged; but again their paramount rights presuppose their observance of the law. Failing in this, their priority is forfeited. Specifically, compliance with the fog rule was a prerequisite to assertion of the righthand vessel's crossing privileges.

Strenuous insistence of fault in the HAITI VICTORY is urged for her failure to make use of radar, particularly, when the HAITI VICTORY's mate had glanced into the radar at Galloper. The assertion is plausible but actually unsubstantial. After the Goeree-Harwich vessel had crossed and passed down the port side of the HAITI VICTORY, the second mate turned on the radar. His purpose was to get his distance off Galloper. It was turned on just as the HAITI VICTORY was changing back from her passing course of 050° to the new course of 036°. He did not see the DUKE on the PPI (planned position indicator) repeater scope, though probably there was a pip on the right half of the scope. But he was not looking for anything to starboard; [fol. 1420] he had no reason to go to the radar to search in any direction. His failure to see the DUKE was not negligence, for it was not the result of neglect of an obligation. No obscurity obligated him to use his radar, and there was nothing else to put him on notice of any need for it.

At this point it is well to refer to the DUKE's radar. Its use would have avoided the collision and its unavailableness was due to neglect of repair. There was ample warning—a day or two—of its disrepair. Had it been in operation, the situation so urgently demanding its services, omission to use it would clearly have been negligence. However, as the DUKE OF YORK's excessive speed was the predominant fault leading to the collision, it is not necessary in this case to pass upon the question of whether or not, in the absence of statute requiring radar, a lack of diligence in maintaining existing radar facilities is negligence.

This memorandum is adopted by the Court as its findings of fact and conclusions of law. Within 10 days proctors for the United States will present a decree in accordance therewith, exonerating the petitioner, after submitting copies to the claimants' proctors for consideration as to form.

Albert V. Bryan, United States District Judge.

Alexandria, Virginia, May 5th, 1955.

[fol. 1421] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

[Title omitted]

ORDER DISMISSING ALL PETITIONS TO IMPLEAD BRITISH TRANSPORT COMMISSION, ETC.—May 12, 1955

William B. Eley, Administrator of the Estate of Dale M. Chaney, deceased, L. T. Seawell, Jr., Administrator of the Estate of Ferdinand Vodicka, deceased, Juliet R. Chamberlain, Joseph D. Baca, Oliver Gorm Clausen, and certain other claimants, having filed motions for leave to file petitions herein under the 56th Rule in Admiralty impleading a co-claimant, British Transport Commission, as owner of the SS DUKE OF YORK, and British Transport Commission having objected thereto on the ground that said claimants have no right to implead the said Commission herein;

And an order having been entered in this Court on May 3, 1954, reserving the objections of the British Transport Commission for hearing and determination, and ordering further that meanwhile, and subject to the further order of this Court, leave be granted to said claimants to file their petitions herein;

And this Court, after hearing the arguments of proctors, having filed a memorandum, dated July 2, 1954, [redacted], denying the motions upon the ground that a limitation proceeding does not provide a forum for the adjudication of liability of co-claimants to each other;

[fol. 1422] And Juliet R. Chamberlain having moved this Court to file an amended impleading petition against British Transport Commission, to which said Commission has objected upon the ground that said claimant has no right to implead the said Commission herein;

Now, on motion of McNutt & Nash, Esquires and Baird, White & Lanning, Esquires, proctors for the British Transport Commission, it is

Ordered:

1. That the petitions of William B. Eley, Administrator of the Estate of Dade M. Chaney, deceased, L. T. Seawell,

Jr., Administrator of the Estate of Ferdinand Vodicka, deceased, Juliet R. Chamberlain, Joseph D. Baca, Oliver Gorm Clausen and any and all other claimants herein who may have filed petitions to implead British Transport Commission under the 56th Rule in Admiralty pursuant to the order of this Court dated May 3, 1954, or otherwise, be and they are hereby dismissed, to which ruling each of said impleading petitioners excepted as did also the United States.

2. That the motion of Juliet R. Chamberlain to file an amended impleading petition be and it is hereby granted, but the said amended petition is now dismissed, to which ruling the said Juliet R. Chamberlain excepted.

Albert V. Bryan, United States District Judge.

Richmond, Va., May 12th, 1955.

[fol. 1423] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

Admiralty 7622

IN THE MATTER OF THE PETITION OF THE UNITED STATES OF AMERICA AS OWNER OF THE USNS HAITI VICTORY, FOR EXONERATION FROM OR LIMITATION OF LIABILITY

FINAL DECREE OF EXONERATION—June 2, 1955

The petition of the United States of America as owner of the USNS HAITI VICTORY for exoneration from and limitation of liability having come on for trial on the pleadings and proofs of the petitioner and of the said claimants and having been argued by the advocates of the respective parties;

And the Court having filed its decision that the collision and the loss, destruction, damage and injury arising therefrom were not caused by or contributed to by the fault or neglect of the petitioner or those in charge of the USNS HAITI VICTORY, and that the petitioner was entitled to exoneration from liability, as appears by the opinion on file:

Now, on motion of L. S. Parsons, Jr., United States Attorney, proctor for the petitioner, it is

Ordered, adjudged and decreed,

That the collision described in the libel and petition was not caused by or contributed to by the fault or neglect of the petitioner or those in charge of the USNS HAITI VICTORY;

And that said petitioner is entitled to exoneration from liability;

And that said petitioner be and hereby is forever exempted and discharged from all loss, damage, destruction [fols. 1424-1447] or injury arising from or growing out of the said collision.

Albert V. Bryan, U. S. District Judge.

Alexandria, Virginia. June 2, 1955.

No objection as to form.

Edwin Longcope, Baird, White & Lanning.

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Jett, Sykes and Howell.

Vandeventer, Black & Meredith.

John W. Oast, Jr.

David H. Batchelder, Jr.

Earl M. White.

C. Lydon Harrell, Jr.

Roger Brooks.

John P. Parrish.

[fol. 1448] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 12, 1955

The claimants, previously listed on the notice of appeal herein, hereby assign errors in the proceedings, decrees, orders and decisions of the District Court in the above entitled action as follows:

First: The District Court erred in exonerating the USNS HAITI VICTORY and her owners from all liability for

damages due to the collision with the SS DUKE OF YORK.

Second: The District Court erred in holding that the USNS HAITI VICTORY was neither in fog or chargeable with notice of nearby fog just prior to collision.

Third: The District Court erred in holding that fog conditions were not observed and could not have been observed on the HAITI VICTORY prior to sighting the DUKE OF YORK.

Fourth: The District Court erred in holding that there was no negligence on the part of the HAITI VICTORY for failure to observe the DUKE OF YORK on the radar scope.

Fifth: The District Court erred in applying different standards of good seamanship to two vessels which collided in fog.

Sixth: The District Court erred in exonerating the HAITI VICTORY in spite of her failure to stop immediately on hearing a fog signal forward of the beam.

[fol. 1449] Seventh: The District Dourt erred in not holding the HAITI VICTORY liable for her failure to make prudent use of her radar throughout the voyage.

Eighth: The District Court erred in not holding that a vessel steaming at full speed on a dark overcast night, when the horizon is not discernible, assumes the risk of encountering a vessel obscured by heavier weather, and is under a duty to use her readily available radar.

Ninth: The District Court erred in denying to claimants their right to cross claim and implead the owners of the DUKE OF YORK.

David W. Batchelder, Proctor for Claimants, Citizens Bank Building, Norfolk, Virginia.

Dated: October 12, 1955. Norfolk, Virginia.

[fol. 1450] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK

[Title omitted]

CROSS-ASSIGNMENT OF ERROR—Filed October 21, 1955

The petitioner herein hereby assigns error in the proceedings, decrees, orders, and decisions of the District Court in the above entitled action as follows:

First: The District Court erred in denying to claimants and to petitioner the right to cross-claim and implead the owners of the SS DUKE OF YORK.

L. S. Parsons, Jr., United States Attorney, Proctor for Petitioner.

Dated: October 21, 1955. Norfolk, Virginia.

Certificate of service (omitted in printing).

[fol. 1451] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7102

BRITISH TRANSPORT COMMISSION, *et al.*, Appellants,

versus

UNITED STATES OF AMERICA, as owner of the USNS HAITI VICTORY, petitioning for exoneration from or limitation of liability in a cause of limitation of liability, civil and maritime, Appellee.

Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk

In Admiralty

(Argued January 7, 1956. Decided February 13, 1956.)

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

Edwin Longcope (Baird, White & Lanning; McNutt & Nash, and Edward R. Baird on brief) for Appellant, British Transport Commission; Wilbur E. Dow, Jr., (John W. Oast, Jr., David H. Batchelder, Jr.; Dow & Symmers; [fol. 1452] Vandeventer, Black & Meredith; Hughes, Little & Seawell; Jett, Sykes & Howell; C. Lydon Harrell, Jr., and Earl W. White on brief) for Appellants, Intervening Claimants; and Thomas F. McGovern, Attorney, Department of Justice, (L. S. Parsons, Jr., U. S. Attorney; Leavenworth Colby, Attorney, Department of Justice, and John M. Hollis, Assistant U. S. Attorney, on brief) for Appellee.

OPINION—February 13, 1956

DOBIE, Circuit Judge:

On May 6, 1953, in the very early morning, a collision occurred in the North Sea between the overnight ferry DUKE OF YORK (hereinafter called the DUKE) owned by the British Transport Commission (hereinafter called the Commission), and the transport HAITI VICTORY (herein-

after called the HAITI), owned by the United States. Terrific damage was done to the DUKE, several persons on the DUKE were killed, others were injured and many suffered property damage. The HAITI suffered only minor damages to her bow, amounting to some $60,040.48.

A petition was filed in the United States District Court for the Eastern District of Virginia by the United States, as owner of the HAITI, seeking exoneration from and/or limitation of liability for all losses and damages resulting from the collision. The Commission filed in these proceedings a claim of $1,500,000 for the losses and damages sustained by the DUKE. Numerous death, personal injury and baggage claimants also filed claims in the limitation proceedings, in varying amounts.

Some of the other claimants also filed petitions in the [fol. 1453] limitation proceedings, seeking to implead the Commission therein under General Admiralty Rule 56. In an unreported memorandum, the District Court held that the other claimants could not implead the Commission, for the reason that a limitation proceeding does not provide a forum for the adjudication of the liability of co-claimants to each other. Accordingly, an order was entered in the District Court dismissing the impleading petitions of these other claimants.

The limitation proceedings were tried in the District Court before Judge Albert V. Bryan. At the trial the right of petitioner, United States, to limit its liability, as well as the limitation fund of $1,039,959.52, was established without contest.

Thereafter, Judge Bryan filed his opinion, (131 F. Supp. 712) in which he held that the DUKE was solely to blame for the collision. The final decree exonerating the HAITI was filed in accordance with this opinion.

The Commission, and the other claimants, have filed appeals from the final decree exonerating the HAITI. The other claimants have also appealed from the order dismissing their petitions to implead the Commission in the government's limitation proceedings.

Two questions are before us on this appeal: (1) Did the District Court commit error in exonerating the HAITI and holding the DUKE solely to blame for the collision; and (2) Did the District Court commit error in dismissing the

petitions of the other claimants to implead the Commission in the limitation proceedings instituted by the United States seeking exoneration from, and/or limitation of liability for, losses and damages resulting from the collision.

[fol. 1454] The fault of the DUKE seems quite clear and is not seriously contested. She had left the Hook of Holland bound West for Harwich, England. We quote from the opinion of the District Judge, which finds ample support in the record, (131 F. Supp. 712, 715):

> "The DUKE was running through a 'patchy fog' —'very thick at times' and then fairly clear intervals. She was piercing one fog bank after another. * * * From 3 A. M. on, the fog was 'very thick.' * * * In such weather the speed of the DUKE OF YORK was too fast for good seamanship; it violated the 'moderate speed' injunction in the fog rules of Article 16, International Rules; 33 USCA § 145n. It was an overriding and major fault; collision was a foreseeable result. * * * * At 0412 and up to the collision, visibility was ¼ mile, the captain, his mate and lookout have said, and even in this interval the speed was 12 knots, Half Ahead. Not until the HAITI VICTORY was sighted, the ships ¼ mile apart, and the collision a minute or two off, did the engines go to Slow, 6 knots."

Had the weather been clear and the visibility good all around, under the Starboard Hand Rule, the DUKE would have been the privileged, the HAITI the burdened, vessel. This rule, though, did not apply here by virtue of the fog surrounding the DUKE.

This brings us to the District Court's exoneration of the HAITI, a discussion involving at least three points: (a) Actual or constructive knowledge on the part of the HAITI that she was running into, or alongside, a fog bank; (2) The conduct of the HAITI after the HAITI heard the whistle of the DUKE; (3) The negligent use, or failure to use its [fol. 1455] radar by the HAITI. A careful study of the record convinces us that we cannot reverse the District Court's exoneration of the HAITI.

Visibility was excellent as the HAITI, with a Trinity

House pilot, left Dover, bound for Bremerhaven, Germany. Lights were distinct on both sides of the English Channel. Around 0400 Galloper Lightship was easily picked up by the HAITI, about one point on the port bow. A very short while before the HAITI came abeam of Galloper, a crossing vessel was seen by the HAITI, about 4 miles away. The HAITI altered her course to 050°, went around this vessel's stern and then resumed her plotted course of 036°. This happened about 0414, approximately 3 minutes before the collision, and this crossing vessel came from the East, the direction from which the DUKE was coming.

A trawler, about 1½ miles North of the DUKE, and on a course practically parallel to the DUKE, gave nothing to indicate the presence of fog. Galloper gave no fog signals until 0445, and then signalled only "Cloudy wet dew." The collision occurred about two miles East of Galloper. The mate of the S. S. AMERICAN, which left Dover 17 minutes after the HAITI, testified that his log contained no notation of fog until 0441.

Confirmatory testimony to the effect that there was no fog and no signs of impaired visibility apparent to those on the HAITI was given by her bow lookout, her helmsman and her mate. We must, therefore, affirm the holding of the District Court that the HAITI never knew, nor should have known, of the fog which enveloped the DUKE.

This brings us to the conduct of the HAITI just prior to [fol. 1456] the collision. The first notice those on the HAITI had of the presence of the DUKE was a single blast whistle from the DUKE. The bow lookout of the HAITI promptly reported to the bridge by telephone that he had heard what he thought was a ship's whistle of the HAITI's starboard bow. This whistle was also heard by the helmsman and pilot of the HAITI. The time, then, was apparently about 0414.

The pilot dashed out on the starboard side of the wheelhouse, looked around, saw nothing and went to the radar which disclosed an echo off the starboard bow. He again went out, saw nothing and stopped the engines, around 0415. Those on the HAITI thought the single blast they heard was a fog signal, but they were not sure of this.

Apparently in about a minute, the HAITI pilot saw the

DUKE crossing from starboard to port, gave the order hard right, blew one short blast and went full speed astern. The full speed astern was logged on the HAITI at 0415½, the collision at 0416. The HAITI changed course from 036° to 079° before striking the DUKE. The pilot of the HAITI testified that when he first saw the DUKE looming out of the fog, there was nothing that could be done by the HAITI beyond the hard right and full speed astern. A survey of the deformation of the plates, which is the resultant of the velocities of the ships, showed the speed of the DUKE, at the moment of impact, to be from 2 to 4 times the speed of the HAITI.

Under these facts, we must affirm the holding of the District Court exonerating the HAITI from blame in its conduct just before the collision. This includes the contention [fol. 1457] of the DUKE that the HAITI violated Rule 16 (33 USCA § 92):

"* * *

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over."

See, THE UMBRIA, 166 U. S. 404; *Johnston-Warren Lines* v. *United States*, 196 F. (2d) 689; *Steffens* v. *United States*, 32 F. (2d) 206; THE ANNA M. FAHY, 153 Fed. 866.

This brings us to the radar question. Since the visibility was good, the radar on the HAITI was switched off to stand by about two hours after the pilot boarded the HAITI. At stand by, no images are visible on the radar screen, but the radar is kept heated and, as the pilot testified, "When you do switch it, it comes on immediately." It was proved that the delicate cavity magnetron of the HAITI radar has a short life, so that the actual use of the radar must be carefully rationed.

Counsel for the DUKE make much of the failure of those on the HAITI to observe the DUKE when, for purely navigational purposes, the radar was switched on as the HAITI neared Galloper and the HAITI mate failed to find the DUKE

on the radar screen. On this point, we quote from the opinion of the District Judge, (131 F. Supp. 712, 717):

> "Strenuous insistence of fault in the Haiti Victory [fol. 1458] is urged for her failure to make use of radar, particularly, when the Haiti Victory's mate had glanced into the radar at Galloper. The assertion is plausible but actually unsubstantial. After the Goeree-Harwich vessel had crossed and passed down the port side of the Haiti Victory, the second mate turned on the radar. His purpose was to get his distance off Galloper. It was turned on just as the Haiti Victory was changing back from her passing course of 050° to the new course of 036°. He did not see the Duke on the PPI (planned position indicator) repeater scope, though probably there was a pip on the right half of the scope. But he was not looking for anything to starboard; he had no reason to go to the radar to search in any direction. His failure to see the Duke was not negligence, for it was not the result of neglect of an obligation. No obscurity obligated him to use his radar, and there was nothing else to put him on notice of any need for it."

With this, we must concur. See, The Southport, 82 Ll. L. Rep. 862; *United States* v. The Australia Star, 172 F. (2d) 472, 476, cert. denied 338 U. S. 823; *Wood* v. *United States*, 125 F. Supp. 42, 51; *Pocahontas Steamship Co.* v. The Esso Aruba, 94 F. Supp. 486, aff'd. 197 F. (2d) 422; *Anglo-Saxon Petroleum Co.* v. *United States*, 88 F. Supp. 158; Wylie, Use of Radar at Sea (Institute of Navigation, London, 1953).

As to the defective radar on the Duke, the District Judge observed, (131 F. Supp. 712, 717):

> "At this point it is well to refer to the Duke's radar. Its use would have avoided the collision and its unavailableness was due to neglect of repair. There was [fol. 1459] ample warning—a day or two—of its disrepair. Had it been in operation, the situation so urgently demanding its services, omission to use it would clearly have been negligence. However, as the Duke of York's excessive speed was the predominant

fault leading to the collision, it is not necessary in this case to pass upon the question of whether or not, in the absence of statute requiring radar, a lack of diligence in maintaining existing radar facilities is negligence."

This brings us to the second question before us on this appeal: Did the District Court err in denying the petitions of various claimants to implead the co-claimant, British Transport Commission. This right of impleader is sought under the 56th. Admiralty Rule:

"In any suit, whether in rem or in personam, the claimant or respondent (as the case may be) shall be entitled to bring in any other vessel or person (individual or corporation) who may be partly or wholly liable either to the libellant or to such claimant or respondent by way of remedy over, contribution or otherwise, growing out of the same matter. This shall be done by petition, on oath, presented before or at the time of answering the libel, or at any later time during the progress of the cause that the court may allow. Such petition shall contain suitable allegations showing such liability, and the particulars thereof, and that such other vessel, or person ought to be proceeded against in the same suit for such damage, and shall pray that process be issued against such vessel or person to that end. Thereupon such process shall issue, and if duly served, such suit shall proceed as if such vessel or person had been originally proceeded against; [fol. 1460] the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, or an approved corporate surety, to pay the libellant and to any claimant or any new party brought in by virtue of such process, all such costs, damages and expenses as shall be awarded against the petitioner by the court on the final decree, whether rendered in the original or appel-

late court; and any such claimant or new party shall give the same bonds or stipulations which are required in the like cases from parties brought in under process issued on the prayer of a libellant."

The District Judge stated:

"The impleading petitions cannot be allowed. While the limitation of liability statute, as executed by Admiralty Rules 51-54, has been authoritatively interpreted as offering a forum for the complete adjudication and recovery of all claims, the reference is to claims and remedies against the petitioner only. * * *

To permit one claimant to prosecute another claimant in the limitation litigation would be unfair. The latter has intervened under compulsion, the court enjoining his resort to any other tribunal. Therefore, his responsibility should not be enlarged beyond that incident to his claim. Obedience to the injunction should not expose him to an attack to which, in regular course, he would be subject only in the jurisdiction of his residence or other place of voluntary entrance."

[fol. 1461] In his opinion, the District Judge cited, with the admission that none of these cases was precisely in point, *Just* v. *Chambers*, 312 U. S. 383, 386; *Hartford Accident Co.* v. *Southern Pacific Co.*, 273 U. S. 207; *Department of Highways* v. *Jahncke Service, Inc.*, 174 F. (2d) 894; The Clio-The Springhill, 1948 A. M. C. 75.

This appears to be a question of first impression. While there have been cases involving the right of a petitioner in a limitation of liability proceeding to implead a claimant therein and the right of a claimant or a petitioner to bring in a third party, there have been no cases that involve the precise issue here involved: Whether one co-claimant in a limitation of liability proceeding can implead another co-claimant under the provisions of the 56th. Admiralty Rule.

We advert briefly to the cases cited in the District Judge's opinion. In The Hartford Accident and Just cases, *supra*, the Supreme Court held that when the jurisdiction of the court of admiralty has attached through a petition for limitation, the jurisdiction to determine liability is not lost merely because the shipowner fails to

establish his right of limitation, and the claimants will be furnished a complete remedy by distribution of the *res* and by judgments *in personam* for deficiencies against the owner. In the Department of Highways case, *supra*, the impleading petition was denied, but, in that case, it was a third party that was sought to be impleaded rather than a co-claimant which was before the court and thus subject to the court's jurisdiction, as is the Commission in the instant case. In the Clio-Springhill case, *supra*, the impleading petition was granted, but the party seeking the impleading petition was the petitioner in the limitation of liability proceeding.

[fol. 1462] Though the question is close and not free from difficulty, we think the District Court erred in denying these impleading petitions, which should have been granted. While a hardship might thereby be suffered by the Commission, it would be an even greater hardship on the other claimants if they were left to enforce their rights by independent proceedings. Here we have many claimants from many parts of the world, who have filed their claims in the limitation proceedings instituted by the United States. All of the evidence concerning the collision involved herein has been presented both by petitioner and the claimant, British Transport Commission. The merits of the case have been adjudicated and it would work an undue hardship on all of the claimants herein not to have their rights against the British Transport Commission settled at this time. To hold otherwise would mean that the various claimants would have to pursue their causes of action against the Commission in another forum at great expense and at a time when perhaps much of the evidence necessary to support their claims would have been lost due to the lapse of time.

As a practical matter as well as an equitable one, the claimants herein should be allowed to implead the Commission. The Court (United States Court of Appeals, Second Circuit) in *Algoma Central & Hudson Bay Ry. Co.* v. *Great Lakes Transit Corporation*, 86 F. (2d) 708, stated that a determination in a limitation of liability proceeding will be *res adjudicata*. This position is also supported by The Adah, 258 Fed. 377, wherein the same court stated that all parties to a proceeding for limitation of liability

who appear voluntarily or otherwise and join issues with the petitioners and between themselves are bound by the decree. Thus, if the issue of liability in the instant case is *res adjudicata* and all the parties herein bound thereby, [fol. 1463] then the District Court should also decide the issue of damages as between all the parties before it and this could only be accomplished by the allowance of an impleading petition under the 56th. Admiralty Rule.

It has often been said that admiralty courts sit as courts of equity. Certainly wide acclaim has been lavished on the delight of equity in doing complete justice to all the parties before it and here the Commission was before the court. This view was admirably stated by Chief Justice Taft in the Hartford Accident case, 273 U. S. 207, 215-216:

> "It is quite evident from these cases that this court has by its rules and decisions given the statute a very broad and equitable construction for the purpose of carrying out its purpose, and for facilitating a settlement of the whole controversy over such losses as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding. It is the administration of equity in an admiralty court. * * * The proceeding partakes in a way of the features of a bill to enjoin the multiplicity of suits, a bill in the nature of an interpleader, and a cerditor's bill. It looks to a complete and just disposition of a many-cornered controversy."

This equitable principle was stated and applied by the Supreme Court in the case of *Alexander v. Hillman*, 296 U. S. 222, which was an equity suit brought by receivers of a corporation for the purpose of winding up the affairs of the company and the disposition of its assets. Certain officers of the corporation, who were not served with process, appeared as respondents and presented their claims. The receiver of the company then filed various counter-claims [fol. 1464] against the officer-respondents and prayed for affirmative relief against them. This affirmative relief was allowed. Said Mr. Justice Butler, 296 U. S. 222, 239, 241-242:

> "Treating their established forms as flexible, courts of equity may suit proceedings and remedies to the

circumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge and promptly to enforce substantial rights of all the parties before them.

* * *

Respondents' contention means that, while invoking the court's jurisdiction to establish their right to participate in the distribution, they may deny its power to require them to account for what they misappropriated. In behalf of creditors and stockholders, the receivers reasonably may insist that, before taking aught, respondents may by the receivership court be required to make restitution. That requirement is in harmony with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief."

The directors were required, at the risk of forfeiting their rights, to comply with the invitation and order of court and present their claims in the receivership proceeding. See, also, the opinion of Circuit Judge Parker, (citing *Alexander* v. *Hillman*) speaking for our Court in *Florance* v. *Kresge*, 93 F. (2d) 786.

[fols. 1465-1466] It is contended by counsel for the DUKE that limitation proceedings in admiralty are distinctive and statutory, that they are *sui generis* and quite unlike suits in equity or ordinary civil actions in admiralty. It is said they are neither proceedings *in rem* nor *in personam*. Accordingly, we are told, admiralty courts in such unique and peculiar proceedings should not apply the usual doctrines of equity or admiralty. This technical contention leaves us rather cold. It does not wean us from the liberal view we have reached.

Modern codes of procedure have reflected two facets: (1) all rights, if this can fairly be done, should be decided in a single legal proceeding; (2) parties who submit themselves to the jurisdiction of a court in a legal proceeding should be bound by that court's decision on all questions, appropriate to and seasonably raised in, that proceeding. Those ideas, we think, can reasonably be deduced from the spirit, if not the letter, of the 56th. Admiralty Rule. Certainly

that spirit finds support in the Federal Rules of Civil Procedure.

The decree of the District Court, in so far as it exonerates the HAITI and holds the DUKE solely responsible for the collision, is affirmed. That part of the decree which denies the impleading of the Commission by the other claimants in the limitation proceeding is reversed. And the case is remanded to the District Court for further proceedings in conformity with the opinion.

Affirmed in part; Reversed in part and Remanded.

[fol. 1467] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7102

BRITISH TRANSPORT COMMISSION and CARL LUDWIG ABENDROTH, EMANUEL PHILIP ANHOLT, MATTHEW WILLIAM BAILEY, WILLIAM H. BAKER, M. J. BALL, WILLIAM H. BARKER, DONALD STANLEY JOHN BELLAMY, RAF, CAHN & BENDIT, LTD., ALISTAIR A. CAMERON, *et al.*,

Appellants,

vs.

UNITED STATES OF AMERICA, as Owner of the USNS HAITI VICTORY, Petitioning for Exoneration From or Limitation of Liability in a Cause of Limitation of Liability, Civil and Maritime,

Appellee.

Appeals from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

DECREE—Entered February 13, 1956

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court entered June 2, 1955, appealed from in

this cause be, and the same is hereby, affirmed; that the order of the said District Court entered May 12, 1955, appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the United States District Court for the Eastern District of Virginia, at Norfolk for further proceedings in conformity with the opinion of the Court filed [fol. 1468] herein.

John J. Parker, Chief Judge, Fourth Circuit. Morris A. Soper, United States Circuit Judge. Armistead M. Dobie, United States Circuit Judge.

NOTATION OF ISSUANCE OF MANDATE

March 17, 1956, mandate issued and transmitted to the Clerk of the United States District Court for the Eastern District of Virginia, at Norfolk.

[fol. 1469] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 1470-1471] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1955

No. .....

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 10, 1956

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 12th, 1956.

Earl Warren, Chief Justice of the United States.

Dated this 10th day of April, 1956.

[fols. 1472-1473] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1956

No. 247

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted limited to question 1 presented by the petition for the writ which reads as follows:

> "1. • • • The first question presented is whether other claimants in the proceeding may implead the Commission, under the alleged authority of Admiralty Rule 56, to respond to them in damages for losses suffered by them in the collision."

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3939-6)